IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

APRIL SESSIONS, 1907.

NO. 27. IN EQUITY.

UNITED STATES OF AMERICA, PLAINTIFF,

v.

READING COMPANY AND OTHERS, DEFENDANTS.

Volume II.—TESTIMONY OF GOVERNMENT WITNESSES.

Appointment of Examiner.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

Of April sessions, 1907, No. 27.

The United States of America *v.* The Reading Company et al.

And now, January 30, 1908, upon motion of Alex. Simpson, jr., special counsel for plaintiffs, it is ordered and decreed that Charles H. Guilbert be, and he hereby is, appointed Examiner in the above case, in accordance with Rule XIII of the additional rules in equity adopted by this court, for the purpose of taking the testimony therein, either within or without this district, and to report the same to the court sec. reg.

Geo. M. Dallas,
Cir. Judge.

Return of Examiner.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

The United States of America, plaintiff, *v.* Reading Company and others, defendants.	April sessions, 1907, No. 27. In equity.

I, Charles H. Guilbert, duly appointed by the Court as Examiner to take the testimony in the above-entitled cause, either within or without this district, and to report the same to the Court, do hereby certify that, beginning, pursuant to notice, on May 25, 1908, and continuing from time to time thereafter, I have taken or caused to be taken and recorded all the testimony of the witnesses produced and the exhibits offered on the part of the plaintiff, on the examination in chief, as well as all the proceedings connected therewith, the signing of the testimony by the witnesses respectively being waived by counsel; and that the following is a complete and true record of all such testimony, exhibits, and proceedings, the same beginning with the proceedings before the Examiner on May 25, 1908, and ending with the proceedings on February 16, 1909, and including Government Exhibit No. 1 to Government Exhibit No. 189, inclusive.

In witness whereof I have hereunto set my hand this 23d day of February, 1909.

Charles H. Guilbert,
Examiner.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA, PLAINTIFF,
v.
READING COMPANY AND OTHERS, DEFENDANTS.

April sessions, 1907,
No. 27. In equity.

Met pursuant to notice at room 324 in the Post-Office Building, Philadelphia, Monday, May 25, 1908, at 12 noon.

Present: The Examiner. James C. McReynolds, esq., G. Carroll Todd, esq., special assistants to the Attorney-General, and J. Whittaker Thompson, esq., United States attorney, for the United States. J. F. Schaperkotter, esq., for Lehigh Valley Railroad Company and The Lehigh Valley Coal Company. Hon. J. D. Campbell and Charles Heebner, esq., for Reading Company, The Philadelphia and Reading Coal and Iron Company, and Philadelphia and Reading Railway Company. Samuel Dickson, esq., for Midvalley Coal Company and other individual operators. J. H. Torrey, esq., for The Delaware and Hudson Company, and individual operators. James E. Burr, esq., for Elk Hill Coal and Iron Company and Price-Pancoast Coal Company. Thomas F. Wells, esq., for Pinehill Coal Company and Nay Aug Coal Company and others. J. C. Bedford, esq., for St. Clair Coal Company, and Richard White and Robert White. Willard, Warren and Knapp for the Temple Iron Company, Mount Lookout Coal Company, Melville Coal Company, Lackawanna Coal Company, and M. F. Dolphin. Robert W. de Forest, esq., for The Central Railroad Company of New Jersey and The Lehigh and Wilkes-Barre Coal Company. Hon. Adelbert Moot, for Hillside Coal and Iron Company. George F. Brownell, esq., for Erie Railroad Company, and with Hon. Adelbert Moot, for New York, Susquehanna and Western Railroad Company, Pennsylvania Coal Company, Hillside Coal and Iron Company, New York, Susquehanna and Western Coal Company, and Clarence Coal Company. W. S. Jenney, esq., for Delaware, Lackawanna and Western Railroad Company. Benj. W. Cummings, jr., esq., for Buck Run Coal Company. John B. Kerr, esq.

Mr. McReynolds stated that subpœnas had been served upon certain representatives of the defendant companies, and asked counsel to make such response as they were prepared to.

Mr. SCHAPERKOTTER. Mr. D. G. Baird, secretary of The Lehigh Valley Coal Company, is here present to respond to your subpœna. I desire to say that Mr. John G. Johnson, who is counsel of record for that company in this case, is engaged in court. The books you have called for are in our New York offices, and our auditor of the

coal company who has those records is located at that point. We have prepared certain statements, so far as we are able to prepare them, giving the information that you desire in part. As to some we have not the records in our office, and have got to collect them from the agencies roundabout. We are now doing that work. If you will pass the matter for a few moments I think Mr. Johnson will be here. As to probably three-fourths of the information you desire, we have it, but as to the remaining one-fourth of the information required in regard to shipments to Buffalo, our records are not such as will permit us to give you that, except upon inquiry through our agencies.

Mr. McREYNOLDS. Do I understand you will undertake to do that for us and let us have it later on?

Mr. SCHAPERKOTTER. We will, I think, be prepared, so far as those shipments are concerned, to furnish you with statements that will give you substantially the information you desire.

In response to the subpœna served on W. G. Brown, secretary of The Philadelphia and Reading Coal and Iron Company, Mr. Brown appeared.

Mr. CAMPBELL. Mr. Brown is here in answer to your subpœna.

Mr. McREYNOLDS. Have you brought the information with you?

Mr. CAMPBELL. Yes.

Mr. Brown produced four statements, which he submitted to Mr. McReynolds for inspection, under objection, and with the understanding that if he is called to the stand, or the statements are offered in evidence, objection will be made.

In response to the subpœna served on Richard D. Rickard, of the New York, Ontario and Western Railway Company, and Scranton Coal Company, and Elk Hill Coal and Iron Company, Mr. Burr stated: "I appear here for Mr. Rickard. We have not prepared statements covering the information specially asked for. They will probably be ready in a week or ten days. They are substantially compiete. I assumed that the hearing would be continued at some time in New York. We will furnish counsel with statements, and will produce Mr. Rickard at any time it is desired."

In response to the subpœna served on A. D. Chambers, of the Delaware, Lackawanna and Western Railroad Company, Mr. Jenney stated: "I understand that arrangement was made by my assistant whereby if we produced certain information here this morning you would not desire the presence of Mr. Chambers. I brought down

statements of the facts asked for. I have them here. I have a statement showing all coal transported over the lines of our company from November, 1900, to and including April, 1908, which shows the shipments each month of the different sizes of coal from Scranton to Hoboken, being all the coal transported on the road. That is a correct statement of those shipments. (Statement produced.)

"I have also a statement of the coal included within the first call of the subpœna, being so-called purchased coal, showing, the first statement, coal shipped to Buffalo from individual mines in the year 1907, the aggregate, and also to Hoboken from the individual mines for the year 1907, attached to which is a statement showing these shipments by months from each of the different mines. That is a correct statement." (Statement produced.)

Mr. CAMPBELL. It is understood, when these papers come to be offered in evidence, we propose to object.

Mr. JENNEY. My understanding is that these statements are to be received here as the testimony of Mr. Chambers. I do not want the record to show that we are voluntarily producing these statements. I understand they are subject to any objections that the defendants may see fit to make to them.

Mr. MCREYNOLDS. We understand you produce them in answer to the subpœna, subject to any objections you desire to interpose.

Mr. JENNEY. Yes.

In response to the subpœna served on G. O. Waterman, secretary of The Lehigh and Wilkesbarre Coal Company, it was stated that the answer to this subpœna was covered by the stipulation between Mr. Todd and Mr. de Forest, the information to be submitted in New York.

In response to the subpœna served upon F. Murray Oliphant, secretary of The Delaware and Hudson Company, Mr. Torrey stated: "I understand there was a similar understanding with regard to this. It was necessary to send to Scranton and Albany, and I have a fragmentary statement, but it is not complete. It will be made complete as soon as possible."

In response to the subpœna served on David Bosman, secretary of the Hillside Coal and Iron Company, the Pennsylvania Coal Company, and The New York, Susquehanna and Western Coal Company, Mr. Brownell stated: "The gentleman served with the subpœna on behalf of these companies is Mr. Bosman, the secretary. Mr. Bosman, the secretary in New York, has no information in regard to any of these matters personally, nor has he any control over the facts or records of the company from which he can obtain the infor-

mation. However, I have taken up this matter with a view to seeing what was really desired and what could be prepared, and have conferred with Mr. Todd with regard to the matter. Our accounts are not kept in such a way that we can produce any books containing formal statements to give the information. It will have to be compiled. I have agreed with Mr. Todd that we will have the information compiled so as to have it in convenient form. I have the records ready and was ready to bring them here if desired, but they would fill eight or ten large trunks, and it would be a waste of time. They are open to inspection at any time. We will prepare, with the same understanding as the other counsel, in compliance with the subpœna, statements of the tonnage of the several sizes that were purchased by these two companies, the Pennsylvania and Hillside Companies, for the period designated, or as near to it as we can come, perhaps not further back than 1903 or 1904, but back for several years under the purchase contracts, and also the tonnage of the several sizes so purchased that were shipped during the last year or the previous year, which we can get most readily, 1907 or 1906, to tidewater."

J. G. SEARLES, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. What is your connection with the Pennsylvania Railroad Company?—A. I am general coal freight agent of the Pennsylvania Railroad.

Q. How long have you been such agent?—A. My title was changed three or four years ago, but I have had practically the same duties for sixteen years.

Q. We desire to know the coal companies mining and selling anthracite coal, which are controlled through stock ownership by the Pennsylvania Railroad Company. Can you give us that information?—A. I do not think I could, off-hand.

Q. Who can give us that information?—A. I think Mr. Williams, president of the Susquehanna Coal Company, probably.

Q. Will you undertake to prepare for us a statement and give it to us later showing that information?—A. Yes, sir.

Q. We want to know the names, the capitalization, and the location of all the anthracite coal companies controlled by the Pennsylvania Railroad Company through stock ownership or otherwise, with the names of their officers and where they can be found.—A. I will prepare such a statement.

Q. If you can, tell us whether any of these companies that are controlled by the Pennsylvania Railroad Company buy anthracite coal from independent operators?—A. They do; yes, sir. I have no personal knowledge, however, of the contracts.

Q. Can you gather up that information and let us have it?—A. I suppose it could be obtained.

Q. Will you undertake to do that for us?—A. Yes, sir.

Q. Will you prepare that statement for us and send it to Mr. G. C. Todd, 120 Broadway, New York, at as early a date as you reasonably can?—A. I will do so.

Adjourned.

Met pursuant to notice at room 324, in the Post-Office Building, Philadelphia, Tuesday, September 29, 1908, at 11.30 a. m.

Present: The Examiner; James C. McReynolds, esq., G. Carroll Todd, esq., and J. Whitaker Thompson, esq., for the United States; and J. D. Campbell, esq., J. L. Seager, esq., J. F. Schaperkotter, esq., Everett Warren, esq., W. W. Watson, esq., H. A. Taylor, esq., W. S. Opdyke, esq., J. H. Torrey, esq., and Maurice B. Saul, for various defendants.

Subject to inspection of the counsel for the Government, certain of the defendants produced certain statements.

The Government announced to counsel that it has been proceeding upon the assumption that no objection would be made to the introduction of proof because of the expiration of time allowed by the rules of court, and asked that counsel now advise the Government's representatives if there is to be any objection raised for that reason.

Counsel present stated there would be no objection on this ground.

Mr. McReynolds. Then we will proceed upon the understanding, if there is no notice to the contrary, there will be no objection raised that the proof was not taken within the prescribed time.

The Reading Company, The Philadelphia and Reading Coal and Iron Company, and The Philadelphia and Reading Railway Company each severally waives proof of its incorporation.

The New York, Susquehanna, and Western Railroad admits that it is a corporation of the States of New Jersey and Pennsylvania.

Adjourned to meet at the office of the United States district attorney, Post-Office Building, New York City, on Wednesday, October 7, 1908, at 10 o'clock a. m.

Met pursuant to adjournment at room 47 Post-Office Building, New York City, Wednesday, October 7, 1908, at 10 o'clock a. m.

Present: The Examiner; James C. McReynolds, esq., and G. Carroll Todd, esq., for the United States; and J. D. Campbell, esq., Adelbert Moot, esq., Everett Warren, esq., W. S. Opdyke, esq., George F. Brownell, esq., J. H. Torrey, esq., Robert W. de Forest, esq., and J. F. Schaperkotter, esq., for various defendants.

It is agreed by and between counsel for the respective parties that objections to evidence on the ground of immateriality or irrelevancy may be entered at any time up to three days before this cause is heard. This agreement shall not affect the right of counsel to inter-

pose objections, if they so desire, nor relieve them from the necessity of entering objections upon other grounds than those of immateriality or irrelevancy.

JOSEPH S. HARRIS, a witness for the plaintiff, having been duly sworn, was examined, as follows:

Direct examination by Mr. MCREYNOLDS:

Q. State your age, residence and connection with any one of the defendants.—A. My age is 72 years, my residence is Germantown, Philadelphia. I have no connection with any of the defendants, except that I am a director of some of the companies. I am a director of the Philadelphia and Reading Railway Company, The Central Railroad of New Jersey, The Lehigh and Wilkes-Barre, the New York Coal Navigation Company, and a number of smaller and unimportant companies.

Q. Are you connected with the Lehigh Valley Railroad Company?—A. No, sir.

Q. Are you director in the Reading Company, the Philadelphia and Reading Railway Company, and the Philadelphia and Reading Coal and Iron Company, all three?—A. Yes, sir.

Q. When did you first become connected with The Philadelphia and Reading Railroad Company?—A. With The Philadelphia and Reading Railroad Company, in 1893.

Q. In what capacity did you become connected with The Philadelphia and Reading Railroad Company at that time?—A. I was one of the receivers. I was managing receiver, and I was the president.

Q. How long did you continue to be the president of The Philadelphia and Reading Railroad Company?—A. About eight years.

Q. When did you retire from that position?—A. In March, I believe, 1901.

Q. I understand you became the president of The Philadelphia and Reading Railroad Company in 1893 and continued as president of it and its successor until 1901?—A. I did; yes, sir.

Q. What connection have you ever had with The Philadelphia and Reading Coal and Iron Company?—A. I was an officer of The Philadelphia and Reading Coal and Iron Company in the close of 1870 and continued in that connection, one of the engineers of the company, superintending engineer, until 1877. Then I was a vice-president of the company in 1892, and I was a receiver and president of the company from 1893 to 1901.

Q. So in some capacity or other you have been connected with The Philadelphia and Reading Coal and Iron Company since the latter part of the seventies?—A. No; I was from 1877 to 1890 not connected with it at all; I was out of the service.

Q. In what service were you from 1879 to 1890?—A. I was in the service of The Central Railroad Company of New Jersey and The Lehigh Coal and Navigation Company.

Q. How long have you been in some capacity connected with the anthracite coal trade?—A. I have been in the mining regions and have been in connection with the coal trade since 1864.

Q. Have you, in a general way at least, been acquainted with the anthracite coal trade since 1864?—A. In a general way, yes; in the early years.

Q. Were you brought up in the coal regions?—A. No.

Q. Was your early occupation that of mining engineer connected with the anthracite coal mining?—A. My early occupation was that of a railroad engineer. In 1854 I went into the government service and was there for ten years. Then I went to Pottsville, and since then, in 1864, I have been connected with the coal interests.

Q. When you became president of The Philadelphia and Reading Railroad Company in 1893 it was in the hands of a receiver, was it not?—A. Yes, sir.

Q. When was the property of that railroad company sold, and to whom was it sold?—A. Are you speaking of the reorganization?

Q. Yes.—A. That was in 1896.

Q. Who purchased the property originally belonging to The Philadelphia and Reading Railroad Company?

Judge CAMPBELL. I object to this form of proof. It is all matter of record. A layman might find it extremely difficult to give historically the legal status. The record will show the entire proceeding, the name of the purchaser, the basis of reorganization, etc. I object to this being called out by the oral testimony of a witness, as not being the best form of evidence.

A. I can not answer the question accurately, because I do not know.

By Mr. McREYNOLDS:

Q. You were president of the company?—A. Yes, sir.

Q. Do you not know to whom the property was sold?—A. I should imagine it was sold to the Reading Company, but precisely what the detail of that is I do not remember.

Q. Do you not know?—A. No, sir. The records will show.

Q. Was The Philadelphia and Reading Coal and Iron Company in the hands of a receiver at the same time?—A. Yes, sir.

Q. To whom was its property sold?

JUDGE CAMPBELL. To the Reading Company? Pardon the interruption, and permit me to answer Mr. McReynolds' question. Are you not mistaken when you make the statement that any of these properties were sold to the Reading Company in the foreclosure proceeding?—A. That is the reason that I declined and hesitated to answer; I do not remember the legal details of it. They did not disturb me. I was interested in the business of the company and not in the legal proceedings.

By JUDGE CAMPBELL:

Q. Is it not true as a fact that the sales of all these properties were made to Charles H. Coster and Francis Lynde Stetson, as purchas-

ers, representing an organization of the security holders of the company?—A. It is quite possible that is so.

Q. Do you not recall it?—A. No; I do not know that I do. My mind was very much occupied with the business details of the company, and the legal status of it was in very competent hands, and I was not attending to it at all.

By Mr. McREYNOLDS:

Q. The outcome of the whole matter was that a new company was organized, called the Philadelphia and Reading Railway Company, and that company took over the property originally belonging to The Philadelphia and Reading Railroad Company?—A. Some of it; yes, sir.

Q. And operated the lines which had theretofore been operated by the old railroad company?—A. Yes, sir.

Q. So far as the coal company is concerned, that was sold out, and in the same way was operated thereafter by what is now known as The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir.

Q. In some way supposed to be the successor to the old company of the same name?—A. Yes, sir.

Q. What was the occasion for the organization of the Reading Company?—A. You will have to excuse me from answering that, because that is a legal detail that I do not know.

Q. There was organized what is known as the Reading Company?—A. Yes, sir.

Q. They came into possession of the stock of the Philadelphia and Reading Railway Company, did it not?—A. I do not know what became of the stock of the Philadelphia and Reading Railway Company. I was called there as a business man, and there were a number of eminent lawyers and financiers connected with that and I did nothing about it. I just assented so far as those things go.

Q. You know at the time of this reorganization that the Reading Company became the owner of substantially every share of stock of the Philadelphia and Reading Railway Company, do you not?—A. Yes, sir.

Q. You know, as a matter of fact, that at the same time the Reading Company became the owner of substantially every share of the capital stock of The Philadelphia and Reading Coal and Iron Company, do you not?—A. Yes, sir.

Q. And it has continued to hold those stocks until the present time?—A. Yes, sir.

Q. Did you become the president of the Philadelphia and Reading Railway Company?—A. Yes, sir.

Q. Did you become the president of The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir.

Q. Did you become the president of the Reading Company?—A. I did.

Q. All this took place in 1896?—A. Yes, sir.

Q. You continued to be the president of those three companies down until March, 1901?—A. Yes, if it was March. I do not remember exactly the month.

Q. As president of the Reading Company, what were your duties?—A. I do not know that I can state what the distinction of my duties was. As president of the railroad company I managed the railroad; as president of the coal and iron company I managed the coal and iron company; as president of the Reading Company, I do not remember that there were any very important duties. We declared dividends when we had money to declare them. The Reading Company did not in any way manage the railroad company or the coal and iron company.

Q. What did the Reading Company do?—A. Held the securities, I suppose, and paid interest and dividends.

Q. Was it purely and simply a holding company?—A. So far as I know, it was.

Q. Where did it get the money to pay dividends?—A. Earned it.

Q. How?—A. From the earnings of the railroad company and the coal and iron company.

Q. The only earnings it had were the dividends which it received from the stock it held in the coal company and in the railway company?—A. No; and in the other companies it held. It held the stock of a number of other companies, smaller companies.

Q. A number of other coal companies?—A. No; a number of other railroad companies.

Q. During the time you were president of the Reading Company were the directors of that company and of the Philadelphia and Reading Railway Company and of The Philadelphia and Reading Coal and Iron Company substantially the same people?—A. No. They were different persons in different companies.

Q. There were some persons in all companies as directors?—A. Yes, sir.

Q. Were the lines of railroad which were operated by the Philadelphia and Reading Railway Company substantially the same lines which had been operated by the old Philadelphia and Reading Railroad Company?—A. Yes, sir; with some additions.

Q. Speaking generally, where did those lines extend from and to?—A. The lines of The Philadelphia and Reading Railroad Company extended—their eastern terminus was at Bound Brook, N. J., their western termini were at Shippensburg, in Pennsylvania, and just above Williamsport, Pa.

Q. Did its lines reach many collieries located in the southern coal field?—A. Yes, sir.

Q. Did it reach any of the collieries in the middle coal field?—A. No; I think not.

Q. When was the line constructed from Bound Brook down to Port Reading?—A. That was before my presidency two or three years, I think.

Q. Was that operated by The Philadelphia and Reading Railroad Company while you were president?—A. Yes, sir; I overlooked that.

Q. Then your tide-water terminus was Port Reading, in the harbor of New York, during the time you were president?—A. Yes, sir; our tide-water terminus for coal business in New York Harbor was. We shipped nothing but coal there.

Q. And it is yet?—A. Yes, sir; I overlooked the fact that we operated the Atlantic City Railroad, which ran down to the Jersey coast.

By Mr. CAMPBELL:

Q. That was a separate corporation, and always was, was it not?—A. It was; yes.

By Mr. MCREYNOLDS:

Q. It is operated by the Philadelphia and Reading Railway Company?—A. No, sir; it is an independent organization.

Q. Does its stock belong to the Philadelphia and Reading Railway Company?—A. Largely; yes.

Q. It is controlled by the Philadelphia and Reading Railway Company, is it not?—A. Yes, sir.

Q. It is operated as part of its system, is it not?—A. No; it is operated by its own officers.

Q. Were you president of the Atlantic City road while you were president of the Philadelphia and Reading?—A. Yes, sir.

Q. Describe the general course over which anthracite coal passed when carried by The Philadelphia and Reading Railroad Company from the collieries in the southern coal field to New York Harbor?—A. That coal very largely went to the tide-water at Port Reading, and some of it went to the tide-water termini of the New Jersey Central.

Q. What I want to get is a description of the route which the coal took from the collieries in the southern coal field.—A. Some of it went down near to Philadelphia and took the Bound Brook road, and some of it went down by the Jersey Central. The majority of it went over the Bound Brook road.

Q. Did the Philadelphia and Reading Railway Company have a continuous line from the coal fields to the New York Harbor over which it sent its coal?—A. Of what time are you speaking?

Q. I am speaking of while you were president.—A. No; their only line to New York Harbor was the line to Port Reading. I do not know whether that is considered a part of New York Harbor or not.

Q. They had a continuous line of tracks from the coal regions in Pennsylvania down to Port Reading, on the harbor of New York, over which their coal came?—A. Yes, sir.

Q. That coal was transported upon through bills of lading?—A. I suppose it was.

Q. And is it the course over which the coal is carried to-day?—A. Yes, sir.

Q. What are the general regions in Pennsylvania where anthracite coal is mined?—A. There is a southern coal field, which is largely

in Schuylkill and Carbon counties, and in Dauphin County. There is a middle coal field, which is in Carbon and Luzerne counties, and there is the northern coal field, which is in Luzerne and Lackawanna counties.

Q. Can you give us the approximate area of those several fields?—A. No; I do not remember it at all.

Q. What systems of railroads reach the collieries in the southern coal fields?—A. The Philadelphia and Reading, the Lehigh Valley, the New Jersey Central, and the Pennsylvania.

Q. Do all four of the roads which you have just mentioned have lines extending to tide water at New York Harbor?—A. Yes, sir.

Q. What railroad systems reach what you call the middle coal field?—A. The Central Railroad of New Jersey, the Lehigh Valley Railroad, and the Pennsylvania Railroad.

Q. All those railroads have lines which go directly from the coal fields to New York Harbor, have they not?—A. They go—they do not go directly. The Pennsylvania is not a very direct route.

Q. But it carries coal over its own line continuously from that field to the harbor?—A. No; it does not carry it continuously from the field to harbor. Mostly that coal goes to the West.

Q. What systems go into the northern coal field to carry coal from the collieries?—A. I do not know, as I can not remember them all. There is the Erie, the Delaware and Hudson, the Delaware, Lackawanna and Western, the Lehigh Valley, the Central Railroad of New Jersey, and the Pennsylvania.

Q. The New York, Susquehanna and Western gets in there, does it not?—A. The New York, Susquehanna and Western is one of the Erie's lines.

Q. But it gets into this region?—A. Yes, sir.

Q. With a continuous line?—A. Yes, sir.

Q. The Ontario and Western?—A. Yes; that gets in also.

Q. Of the lines which you have last mentioned, do not the Erie, the Delaware, Lackawanna and Western, the Lehigh Valley, and the New Jersey Central all carry coal from that field over their own lines to New York Harbor?—A. Yes.

Q. Are you acquainted with the general character of coal that is mined in these various fields?—A. Yes, sir.

Q. Is the coal substantially of the same general character from the three fields?—A. It is all anthracite. It varies a good deal in value. For instance, in the western part of the southern field the Lykens Valley coal of the Reading and of the Pennsylvania is of considerably more value than coal from farther east. Then there are several grades, Shamokin and Locust Mountain, that are of higher value than the coal farther east.

Q. Speaking generally, it is all anthracite coal?—A. It is all anthracite; yes.

Q. And used for the same general purpose?—A. The coals of the western part of the field are used largely as domestic coals. They

are a little less used for manufacturing purposes than the coals in the east are.

Q. Do these coals sell at about the same prices?—A. No; the prices differ considerably. The coal in the western fields is decidedly higher. I do not know how much; 50 cents a ton, possibly.

Q. What do you mean by the western field?—A. The western end of the southern field.

Q. The eastern end of the southern field and the middle field and the northern field—in those are the coals all of the same general kind?—A. They are all anthracite; but in the western end of the northern field the coal sells for a higher price.

Q. It is a better grade of coal?—A. Yes; it is a better grade of coal and used for different purposes. The coals are richer in carbon.

Q. Taking the different collieries in these different fields, is there some difference in the coals that are mined from them?—A. Yes, sir.

Q. Some difference in the value of the coals mined from different collieries?—A. Yes.

Q. Have you any acquaintance with the cost of mining in these various collieries?—A. Yes, sir.

Q. Is there a decided variation in the cost of taking the coals out of the different collieries?—A. Yes, sir.

Q. Within what range would you say?—A. I should suppose the range of cost might be a dollar or a dollar and a half a ton.

Q. In other words, it might cost from a dollar to a dollar and a half a ton more to take coal out of colliery A than out of colliery X?—A. Yes.

Q. Without going into particulars generally, what occasions that difference of cost?—A. Down in the southern field the geological structure is very much more confused. In making coal there the bases seemed to have been pressed together, and there is much more grit interposed among the coal than there is in the northern field. Then, the veins stand more steeply. In some cases they stand at all angles from a horizontal to more than vertical, they overturn, the veins are large, and the coal in getting down from those steep pitches is much more costly than flat pitches of the northern field. Then, in the southern field you have got to take out a great mass of material that is not coal. I remember making a calculation once that in one of the fields, I think, there were 3 tons of stuff taken out for every ton that was sent to market; whereas in the northern field you probably would not take out more than a ton and a half or a ton and a quarter. The refuse is left in the mines. The cars in the northern field are largely loaded by hand; the coal is picked up and put in the cars. In the southern field it is thrown out of chutes, and they take everything; they take props that have held up the mine, rock comes out, slate comes out, and dirt comes out. I have seen many cars come out of those regions where, when you came to look at them, there was nothing but dirty water and slush.

Q. Some of those coal veins lie very much deeper under the surface of the earth than others, do they not?—A. Yes, sir.

Q. The deeper you mine the more cost?—A. Yes, sir.

Q. I suppose some mines have a great deal more water than others in them?—A. Yes, sir.

Q. And the greater the amount of water the greater the cost to get the coal out?—A. Yes, sir; in that same colliery where I estimated there were 3 tons of stuff taken out for every ton, for every ton there were 10 tons of water came out, which had to pumped from a very great depth.

Q. You have been acquainted with these coal fields since 1864?—A. Yes, sir.

Q. Taking the period from 1864 until 1870, who owned the coal mines throughout these several fields? Were they principally owned by railroads and their connected companies, or were they owned by individual operators?—A. There were a number of individual operators. There were more individual operators then than there are now. But the coal companies connected with the railroad companies owned, I suppose, the majority of the coal at that time.

Q. Prior to 1870?—A. Yes; I should say so.

Q. Since 1870 what has been the trend in reference to ownership?—A. There has been some increase. The individuals that went in very largely broke up; the mining was not profitable, and they sold out largely to others, to these companies.

Q. And the railroads and their coal companies have come to own more and more?—A. They have come to own more and more; yes. That was particularly the case, possibly, in the Reading Company's field, where, in nearly fifty years that I have known that region, almost all the people who went in and attempted to mine coal broke up.

Q. You speak of the Reading field. I presume you refer to the southern field?—A. Yes.

Q. Until now it has come about that the Reading owns and controls and operates a very large part of all the collieries that are there?—A. Yes.

Q. What companies do you recall operating these fields prior to 1870?—A. The companies that were there are very much those that are there now. There were several individual operators, operating single collieries.

Q. But the ones you recall were the same ones that are there now in operation?—A. I should say so; yes.

Q. Prior to 1896 did not The Philadelphia and Reading Railroad Company own substantially all the capital stock of The Philadelphia and Reading Coal and Iron Company?—A. I suppose it did; yes, sir.

Q. Were separate books kept by the two companies?—A. Yes.

Q. As a practical matter, how were the accounts between the two companies kept?—A. There were no accounts between the two companies that I recall. The coal and iron company mined its coal and delivered it in cars at its breakers to the railroad company, and the railroad company carried it to market.

Q. And charged the coal company the published tariff rates, did it?—A. Yes.

Q. Were large sums of money advanced by the railroad company to the coal company?—A. Yes.

Q. Was any interest charged on those advances?—A. Interest has been paid on those amounts since the reorganization. I do not think it was before.

Q. Subsequent to the reorganization, in 1896, and up to the time, you left the company, in 1901, was the coal company financed by the railroad company?—A. No, sir.

Q. Were large sums of money loaned it?—A. No, sir. It carried itself and has paid interest to the Reading Company on its debt.

Q. Did the Reading Company finance the coal company by making loans to it?—A. No.

Q. The coal company was able to stand by itself?—A. Yes, sir.

Q. You feel sure that the railway company did not loan money to the coal company?—A. I know the railway company did not. I am satisfied that neither of them did.

Q. You were the president of the coal company and were, of course, familiar with the methods it adopted in marketing its coal in New York, were you not?—A. Yes.

Q. Can you tell us the approximate cost of the coal company of marketing its coal in New York Harbor?—A. No.

Q. Can you give us any idea about that?—A. No; I can not.

Q. How was it done as a practical question?—A. It was sold by an agent of the coal company here.

Q. The coal company had an agent here in New York?—A. Yes, sir.

Q. The coal was consigned to him and he sold it?—A. Yes.

Q. To whom?—A. To whoever would buy it.

Q. I desire to know whether he sold it wholesale or retail?—A. He sold both at wholesale and retail.

Q. And the costs of those selling arrangements were paid by the coal company, whatever they were?—A. Yes, sir.

Q. Did you know anything about an agreement entered into in the year 1876, which was signed by Thomas Dickson and Franklin B. Gowen, committee, on behalf of certain anthracite carriers carrying coals from the Pennsylvania regions to New York?—A. No, sir.

Q. You had no knowledge of it at the time?—A. No, sir.

Q. Who was the President of The Philadelphia and Reading Railroad Company in 1876?—A. I suppose Mr. Gowen was.

Q. Were you connected with the road or with the coal company at that time?—A. I was connected with the coal company.

Q. Were you not aware of an agreement existing between the Reading Railroad, the Delaware and Hudson, the Central Railroad Company of New Jersey, the Lehigh Valley, the Delaware, Lackawanna and Western, and the Pennsylvania Coal Company, entered into in 1876?—A. No, sir.

Q. Did you have anything to do with marketing the coal during the years between 1870 and 1893, when you became president of the Reading Railroad Company?—A. No; my duties with the coal and iron company up to 1877, when I left its services, were entirely mining.

Q. You had no knowledge of this agreement, if there was one entered into between these railroads, in reference to the price of coal?—A. None whatever.

Q. Did you have, while with the Reading Coal and Iron Company, control of the amount of coal which it put out from month to month?—A. No; while I was in charge of the coal company's mining, which I was in 1876, I guess, during the sickness of General Pleasants, who was the chief mining engineer, I think we ran pretty steadily.

Q. Was coal mining at that time profitable?—A. Not to the Reading Coal and Iron Company; no.

Q. What was the difficulty?—A. Could not get as much as it cost to mine it.

Q. Why?—A. I do not know.

Q. Who were your competitors?—A. All the other companies.

Q. In all the other regions as well as in the southern region?—A. Yes.

Q. What about your freight rates?—A. You are asking about things now that were not in my view at all. I do not know anything about them. I was subordinate, also. I had nothing to do but simply with the mining of the coal.

Q. After you became president of the Reading Railroad Company in 1893, and also of the coal company, did you direct, from time to time, how much coal should be produced by the collieries?—A. Yes.

Q. How did you ascertain what that should be?—A. From the reports of our selling people and the stock of coal we had on hand.

Q. What was your arrangement with the other coal-carrying roads in reference to that matter?—A. We had no arrangement.

Q. Had you no method of communication by one to the other about what was being done?—A. Of course, the president of one company would talk to the president of another when he met him. There was nothing but that.

Q. What was the percentage of the total output of coal which you expected to get out each month?—A. We got out in those months 18 to 20 per cent.

Q. Did you have a general understanding of how much the other coal companies were to produce?—A. No.

Q. Had you information about what they were going to produce?—A. I do not know that I had information about what they were going to produce. I had information about what they did produce at the end of the month.

Q. Were you producing as much coal as you could?—A. Yes; ordinarily. In the months from September to December we produced all that we could. In the spring we did not produce all that we could, because we could not sell it.

Q. Your percentage was from 18 to 20 per cent?—A. We ordinarily shipped that; yes.

Q. Did you ever hear of a board of control in connection with the production and selling of anthracite coal?—A. No.

Q. Did you ever hear of a committee of six, with a representative from each one of what were called the coal interests, who were to consider from time to time the amount of coal that should be shipped?—A. In what years do you speak of?

Q. Any time subsequent to 1876?—A. No; I did not.

Q. During the time that you were president of The Philadelphia and Reading Railroad Company, from 1893 to 1901, what were the competitive roads in the coal trade with which you came in competition?—A. We came in competition with all the roads that were carrying coal from Pennsylvania.

Q. Name the principal ones in reference to carrying coal from the coal mines to the New York Harbor?—A. The Reading, the Lehigh Valley, the Central Railroad of New Jersey, the Delaware, Lackawanna and Western, the Erie, and the Pennsylvania Railroad.

Q. What determined the freight rates during that time which you put into effect over the Philadelphia and Reading Railway Company?—A. So far as I know, in our company they were determined by the company.

Q. Of course, they were fixed by your board of directors, or by yourself, but what were the conditions which required you to arrive at one figure or another, what were the things which influenced you?—A. If there were ever any negotiations, they were there before my time.

Q. There was some reason, was there not, why you fixed the rate at $1.50 instead of $1.65—what were the reasons which influenced the company in fixing its rates?—A. The same thing as influenced it in fixing its freight rates on any other product.

Q. What are they?—A. What seems to be the proper charge for doing the business.

Q. What effect did the competition of these other roads have upon your rates?—A. I do not know that it had any effect. I do not think in my time the rates were ever changed.

Q. You had the same rate from 1893 to 1901?—A. I think so.

Q. Were the rates over the other roads the same?—A. I do not know.

Q. You advised yourself about the rates over your competitors' lines, did you not?—A. I do not know that I advised myself. I knew in general what they were.

Q. Your rates necessarily had to be governed more or less by the rates of your competitors, did they not?—A. Yes; we could not have charged very much greatly different from them. If we charged much less we could have taken business away from them. If we had charged much more our business would have dried up.

Q. In other words, the competitive conditions were such that you had to fix your rates at approximately what the others were?—A. Yes, sir.

Q. Just as in other cases between competing roads?—A. Yes, sir.

Q. In the years 1884, 1885, 1886 what was your position in relation to The Philadelphia and Reading Coal and Iron Company?—A. I had none.

Q. With what companies were you associated at that time?—A. I was president of The Lehigh Coal and Navigation Company.

Q. How long were you president of The Lehigh Coal and Navigation Company?—A. From 1882 to 1893.

Q. What was the business of that company?—A. The mining of coal.

Q. Over what lines did it transport the output of its collieries?—A. Mostly over the New Jersey Central.

Q. To what points was it sent?—A. Mainly to Philadelphia and New York and territory contiguous.

Q. About how much coal was produced by the company at that time?—A. I should say roughly from eight hundred thousand to a million tons.

Q. How was its output divided between The Philadelphia and Reading Railroad Company and the New Jersey Central—what determined that division?—A. The Lehigh Coal and Navigation Company in its early history had built a railroad running from the Wyoming region to Phillipsburg on the Delaware River, where it connected with the Jersey Central. It had leased that road to the Jersey Central, and its general arrangements were to send all the coal over the Jersey Central to New York. The coal that went to Philadelphia went over the Reading Railroad and the Belvidere branch of the Pennsylvania Railroad.

Q. The lease of that road contemplated the payment of a certain per cent of the amount of freight that was sent over it, did it not?—A. Yes.

Q. Did The Philadelphia and Reading Railroad Company reach any of the collieries which were reached by the New Jersey Central system?—A. No; not any of The Lehigh Coal and Navigation Company's collieries. The Lehigh Coal and Navigation Company owned the roads that supplied its mines, and no other company went in there then, nor does any other go in now.

Q. Does the coal from those collieries come to New York now over the New Jersey Central Railroad?—A. Yes, sir.

Q. Who owned the capital stock of The Lehigh Coal and Navigation Company while you were its president?—A. Individuals.

Q. It was not owned by any railroad company or any other coal company?—A. No, sir.

Q. It was an independent in the field?—A. Yes.

Q. Did it have a selling agency of its own?—A. Yes.

Q. Did it have agents in New York?—A. Yes, sir.

Q. How were the prices of its coal fixed in New York?—A. Fixed by orders to the selling agents at which they should sell.

Q. Who were your competitors in this market?—A. All the people who came to the market.

Q. Do you mean all the coal companies who were mining in all these three separate fields in Pennsylvania?—A. Yes; generally that is true. Yes.

Q. Your coal was in competition with coal from all these other collieries, speaking generally, of course?—A. Yes, sir.

Q. In December, 1884, you were present at some sort of a meeting of coal interests here in New York, were you not?—A. Not that I know of.

Q. You do not recollect that?—A. No.

Q. Along in 1886, or a little earlier, the Commonwealth of Pennsylvania instituted a proceeding against certain coal carrying roads and certain coal companies, charging them with being in a combination, did it not?—A. You have the papers there. I do not remember the dates. Yes.

Q. You were a witness in that suit?—A. I was a witness in some of the suits. I do not know particularly what suits they were.

Q. I have here what purports to be a copy of the testimony taken in this injunction suit between the State of Pennsylvania and certain anthracite carriers in the year 1886, and what purports to be a copy of your testimony given in it. It is an appendix to a report of the congressional committee made in 1889. You were called upon to testify in reference to certain meetings, of which you were the secretary, and which were held, the first one, at the office of the Lehigh Valley Railroad Company, in Philadelphia, at which were present representatives of all the anthracite interests?—A. Do I say there that I was secretary?

Q. You signed these minutes. They purport to be set out here signed by you as secretary. I show you what purports to be a copy of your testimony, and ask you to look at it, refresh your recollection with it, and see if the statements that were made in reference to this meeting of December 19, 1884, held at the office of the Lehigh Valley Railroad Company, in Philadelphia, and a copy of the minutes set out here, are correct?—A. I should imagine that those were authentic notes. I see no reason to doubt that they are.

Q. You were asked in the subpœna duces tecum to bring a copy of these minutes along with you to-day. Are you able to produce them?—A. No; I looked for them, but I did not find them or any indication of them. I looked for them twice.

Q. After refreshing your recollection, state to us whether you were present at this meeting referred to in the testimony given in the case to which I have referred, and whether you kept the minutes set out here in this congressional report?—A. My memory had entirely gone that there was ever a meeting of which there was a chairman and I was secretary. I suppose if I testified at that time that it was so, it was so.

Q. Have you no recollection of it now?—A. No; I have not. I do not recall. I did not suppose they were that formal. I do not remember at all. It is twenty-four years ago, and the matter has passed out of my mind altogether. I should have said, in fact, I did say in talking over the matter when this subpœna came, that there never was any meeting of which there was any organization. That was my recollection. I have no doubt that the documents from which I spoke were very much fresher in my mind then than they are now, and I have no doubt my testimony there is correct. I never looked over the testimony as printed. I never have seen it.

Q. I show you this entire testimony set out in this appendix to the report made by the committee of the House of Representatives to investigate labor troubles in Pennsylvania, of which Mr. Tillman was chairman, and which was made in February, 1889, and ask you to examine it and see whether or not you have any reason to doubt that it is authentic and that the statements made therein are correct?—A. I do not remember that I ever appeared before a committee.

Q. This is your testimony given in a case brought by the State of Pennsylvania against certain coal-carrying roads, wherein you said a while ago you remembered you testified. This purports to be a copy of your testimony given in that case. Not before the congressional committee.—A. How can I testify as to its correctness?

Q. You can examine it and tell us whether you think it is right or wrong.—A. My memory will not serve me twenty-four years as to the details of this. The people who published it, it seems to me, would be the people to authorize it and say where they got it. I do not remember anything about it.

Q. You do not remember about it?—A. I do not remember about it, no. I do not see anything here that may not be so, but I could not swear it was so at all. I do not know anything about it. I never saw this document, and do not really know anything about it.

Q. Do you remember being present at a meeting at any time in the year 1884, or thereabouts, when there were present representatives of what are called the anthracite interests, and Mr. Sloan was in the chair, and you were secretary, and at which meeting the chairman explained the object to be the devising of the best means of carrying on the business of producing and marketing anthracite for the year 1885?—A. I think it very likely I was. When I say I do not remember it, I simply do not remember it.

Q. There were such meetings, whether you were present or not, of which you had knowledge?—A. There were such meetings; yes.

Q. The purpose of those meetings was to determine what was the best plan to be pursued by all the coal interests?—A. I suppose so.

(Objected to by Judge Campbell.)

Q. There were such meetings held at different periods during the years 1884, 1885 and 1886, were there not?—A. That I do not know. I do not know how long they lasted.

Q. What was the purpose of those meetings?—A. Is it not stated in the report you have read from?

Q. Yes, it is stated here.—A. If you will read it I will state whether it agrees with my recollection.

Q. The first meeting passed this resolution. (Reading:) "It is the judgment of this meeting that for the future the total output of anthracite coal required or taken by the market shall be divided among all interested in proper monthly or yearly quotas.

"Resolved that a committee of three be appointed by the chair to prepare and present at an adjourned meeting a plan for such distribution, with the proper quotas to be allowed to each interest.

"Resolved that each interest be requested to prepare and submit to said committee its claim for quotas, with such other suggestions as it may desire to present for the consideration of the committee.

"Chairman nominated and meeting elected the following committee in pursuance of the second resolution: F. B. Gowen, G. M. Hoyt, and J. S. Harris."

Q. Do you remember serving on a committee of that sort?—A. No; I do not.

Q. That does not refresh your recollection about it at all?—A. No; it does not. It does not make my recollection at all clear. I do not remember that I ever served with those gentlemen. I do not remember what I did.

Q. Do you recollect whether you and those gentlemen formed a report and gave that report to a subsequent committee, in which you prescribed what percentages of the coal output should be given to the various interests?—A. I do not remember it at all. I do not remember ever dealing with those questions with Mr. Gowen or Mr. Hoyt. My memory is an entire blank about it.

Q. Do you not recollect that you reported that The Philadelphia and Reading Railroad Company should have a certain per cent, and the Lehigh Valley Railroad Company a certain per cent?—A. No; if it is there, and if I have testified to it, it is probably true, but I do not remember it.

Q. You do not recollect anything about these meetings whatsoever, or about these minutes?—A. No; I do not remember anything about those meetings, except I remember that there were meetings, but as for the details of them, I do not remember at all.

Q. What was the purpose of those meetings you do remember during the years 1884, 1885, and 1886?—A. It has been stated by the chairman there, to consider the interests of the coal producers.

Q. You do remember, then, that there were meetings?—A. I do remember that there were meetings.

Q. And those meetings were composed of representatives of the various coal interests?—A. Yes, sir.

Q. And they came together for the purpose of determining how much coal should be produced by each?—A. That is evident from what is stated there. Perhaps it would be proper to testify here,

that while there was a general understanding as to the precentages to be produced by each, those percentages never were lived up to.

Q. State whether or not there were meetings at various times during the years 1884, 1885, and 1886, where there were representatives of the various coal interests, for the purpose of determining how much percentage of the total output should be allotted to each interest?—A. I should agree with that, except that I do not remember the years. They were about that time, but I do not remember what years.

Q. As the result of those deliberations was there a general understanding that each interest should produce a certain amount of tonnage?—A. Yes.

Q. How long did that continue to be observed?—A. It never was observed at all.

Q. I do not mean how long was it continued to be observed accurately, but generally; how long did that understanding exist, and was it expected these interests would live up to it?—A. It was not observed at all, as I say; people did as they pleased.

Q. What was the object of meeting year after year if nobody observed anything?—A. That I do not know.

Q. You just met and fired this gun off and retired?—A. That was so; yes.

Q. You continued to meet each year and fire it off?—A. Yes; and no doubt remonstrated with those who had exceeded their quotas.

Q. There was a purpose to try to induce each one of these interests to live up to this agreement?—A. Yes, sir.

Q. How long did that thing continue?—A. I do not know.

Q. Did it not continue as long as you remained president of the Philadelphia and Reading Railway Company?—A. I do not think it did.

Q. When do you think it was abrogated?—A. I do not really know. If it ever was abrogated it fell to pieces itself, but I do not remember the details at all. I do not think there were meetings in the latter part. I do not remember any meetings at all during my presidency. That is as far as I would say about it. I would not say that there were or were not. I say I do not remember them.

Q. What were the names of the various interests that were represented in this understanding that you gentlemen reached at these meetings?—A. They are there. I could not remember them without reading them over.

Q. Let us see if this is correct: The Philadelphia and Reading Company, Lehigh Valley Railroad Company, Delaware, Lackawanna and Western Railroad Company, Delaware and Hudson Canal Company, Pennsylvania Railroad Company, Pennsylvania Coal Company, and New York, Lake Erie and Western?—A. Yes; I should say so.

Q. Those were the great mining interests at that time in the anthracite business?—A. Yes.

Q. The purpose of those meetings was to get together and compare notes and to see what was to the best interest of all, and to secure cooperation, if possible?—A. Yes.

Mr. McReynolds proposed to read from minutes.

Judge CAMPBELL. I object to all reference to what is contained in the supposed minutes, either by embodiment in questions by counsel or otherwise, as not only immaterial under the general objection noted at the beginning of this record, but it is also incompetent. The verity of the document quoted from is not shown in any way.

By Mr. MCREYNOLDS:

Q. At these meetings about which you have spoken there was a general understanding of the percentages which were to be allotted to each interest, was there not?—A. Yes.

Q. I read you: "As the result of the conference, there was allotted to the Philadelphia and Reading interests, including those of the Schuylkill producers, the Lehigh and Wilkes-Barre, and Lehigh Coal and Navigation Company, 38 $\frac{55}{100}$ per cent; the Lehigh Valley interests, including those of the Lehigh producers, 19 $\frac{5}{8}$ per cent; for the Delaware, Lackawanna and Western interests, including those of the New York, Susquehanna and Western, 16 $\frac{5}{8}$ per cent; the Delaware and Hudson interests, 11 per cent; for the Pennsylvania Railroad interests, 8 per cent; for the Pennsylvania Coal Company's interests, 5 per cent; for the New York, Lake Erie and Western interests, 1 $\frac{5}{8}$ per cent." You can not recollect the amounts of these particular percentages, but have you any reason to doubt that those were the percentages agreed upon?—A. No.

Q. During the time you were the president of the Philadelphia and Reading Railway Company was it your endeavor to produce about the per cent agreed upon at these conferences?—A. Yes, sir.

Q. You sought from month to month to see that your percentages kept up to that level?—A. Yes, sir.

Q. Was it your observation, speaking generally, with now and then an exception, the other interests involved did the same thing with reference to their percentages?—A. No; it was not. There used always to be a difficulty because certain interests produced, quite regardless of those percentages. They did not vary very much. The mining and shipping of coal, coal being a thing that is difficult to store, was very largely dependent upon what they could sell, and after they sold what they could and stored what they could, they had to stop. It was that really that governed them, so far as I ever saw.

Q. Were you present by the invitation of J. Pierpont Morgan at his house, No. 219 Madison avenue, in New York City, in March, 1886, when there was a conference called in reference to the anthracite coal interests, and Mr. John King, jr., was made chairman of the meeting, and Mr. J. S. Harris appointed secretary?—A. I do not remember it.

Q. You do not remember being there at all?—A. No; I did not know that I ever was at such a meeting at Mr. Morgan's house.

Q. Do you not recollect that at this time, in 1886, and at that meeting, that after a general discussion of all the interests involved: "That it was unanimously resolved that the representatives of the anthracite interests agree upon a pool of the anthracite to be mined between March 31, 1886, and March 31, 1887, the output for the year first named, for the purposes of this agreement, to be estimated at thirty-three and a half million tons; the percentage of each interest is to be determined hereafter, and that any party shipping over its percentage shall account to the pool for the amount by which it may be found on the 31st of March, 1887, to have exceeded its percentage, at the rate of 50 cents per ton?"—A. I do not remember that any such thing was ever done. It never was followed up. Nobody ever paid any attention to it, and nobody was ever asked to pay anything, and nobody ever did pay anything.

Q. You do not recollect being at a meeting when that resolution was passed?—A. No; I do not.

Q. Do you not remember at that same meeting it was resolved unanimously that the price of coal should be immediately advanced 25 cents per ton f. o. b. New York?—A. My recollection is entirely gone about those meetings. I do not remember anything about them.

Q. If, however, you testified in reference to that matter, and introduced those minutes in this proceeding by the State of Pennsylvania against certain coal roads, you knew it then, and it was correct?

Judge Campbell objected to injecting matter into the record in this form.

Q. You do recall you told me you testified in that proceeding?—A. Yes, sir.

Q. Of course, what you said at that time was true, within your knowledge?—A. Yes, sir.

Q. Were you acquainted with the fact that in 1883 The Philadelphia and Reading Railroad Company leased The Central Railroad Company of New Jersey and the Lehigh Valley Railroad?—A. No.

Q. Were you aware of the fact that they leased The Central Railroad Company of New Jersey at that time?—A. I do not remember the date.

Q. About that time they did undertake to lease The Central Railroad Company of New Jersey, did they not?—A. Somewhere about that time; yes, sir.

Q. How long did that lease continue?—A. A year or two, I should think.

Q. Why was it terminated?—A. Because the Reading Railroad did not pay its charges, I suppose. I had no official relation with the Reading Railroad at that time. I had with the Jersey Central.

Q. By that lease did the Reading Railroad acquire control over the coal interests of the New Jersey Central road, as well as the road itself?—A. I do not know whether it did or not.

Q. Who was the president of The Philadelphia and Reading Railroad Company in 1883?—A. I do not know. I do not know whether

that was Mr. Gowen's time or Mr. Corbin's. These are matters about which I have never refreshed my memory.

Q. Mr. Gowen seems to have been the president of the railroad at that time?—A. Yes; very likely he was.

Q. Coming now to the year 1896, while you were the president of The Philadelphia and Reading Railroad Company, give us the substance of the agreement between the presidents of the anthracite coal roads entered into at that time, establishing what were thereafter commonly called the "presidents' percentages."—A. I do not know anything about it.

Q. Have you never heard of the "presidents' percentages?"—A. I have never heard of the "presidents' percentages." I never heard the term.

Q. What was the agreement entered into by the presidents of the railroads in 1896 in reference to allotting to each interest a certain percentage of the total output of coal?—A. I do not know. I do not remember that there was any agreement at all. Have you anything there to refresh my memory?

Q. In 1896 was there not a meeting of the presidents of the coal-carrying roads in which the question of the allotment of tonnage was discussed?—A. That I do not remember at all.

Q. Do you remember no discussion in reference to that matter between the presidents of the various coal-carrying roads?—A. No; if you will give me the papers I will look over them and tell you.

Q. This is your testimony which was taken in the investigation before the Interstate Commerce Commission [referring to testimony].—A. I no doubt gave my testimony correctly then.

Q. You were asked: "You do recollect, do you not, that there was a time when that matter," referring to the distribution of tonnage among the coal-carrying roads, "came up for discussion among the presidents of the coal-carrying roads?" and you replied, "What question came up? Q. The question of the division of the business of carrying coal—the question of the division of the anthracite coal into certain percentages?" you saying, "Understanding as to what share of the business each road was legally entitled to. Q. Yes, if that makes it clearer," and then you answered that, "Yes."

JUDGE CAMPBELL. I think the witness's attention should be called to the whole of his examination and cross-examination, because he may have, and probably did on further recollection or refreshment of his memory, made a very material change in the substance of his testimony.

By Mr. MCREYNOLDS:

Q. Have you any recollection of those meetings at all?—A. I have no recollection of them at all; no. If I were to see these minutes or to read them, I might remember them. I have no doubt that what I testified to there was true. That is all I can say.

Q. From 1896 down to the time when you left the Reading Railroad Company was there not a general understanding between you and the various presidents of the coal-carrying roads as to what

percentage each one should be entitled to?—A. There was not a general understanding, because it was the subject of a great deal of contest. I do not believe, so far as my recollection goes, that there was ever any agreement made at all.

Q. Please read this testimony that you gave before the Interstate Commerce Commission in 1903, commencing on page 1570, for three or four pages, and see if it refreshes your recollection on that subject.—A. (After reading testimony:) I notice I said then, as I say now, that it was too far away for me to recollect any of the details of that meeting. It has been long years since, and my memory has not been refreshed. I think this testimony of mine, from page 1572 to page 1575, is all correct.

Q. Having read that, do you not remember that there was a meeting in the year 1896?—A. I only remember it by these papers.

Q. Having refreshed your recollection about that, do you not remember that there was a meeting in the year 1896 of the presidents of the anthracite coal-carrying roads at which they came to a general understanding about the amount of the proportion of the total coal output which should be allotted to each?—A. Yes.

Q. What was the percentage at that time allotted to the Philadelphia and Reading interest?—A. Twenty and a half, it appears from this testimony.

Q. And each of the other roads had some percentage of a similar character allotted to them?—A. Yes; I say here in this testimony, "there was never any binding agreement"—I thought there was not—"as can best be shown by the statistics at that time. There never was a year when that understanding was kept or nearly kept, and as a general statement of what would be fair and reasonable, there was never a single year when there was an approach to it." That is a general statement, and that is correct.

Q. There was, however, a general understanding among the parties, that they should each endeavor to produce a given percentage which was allotted?—A. Yes, sir.

Q. And that understanding, general as you call it, continued in force as long as you remained with the Reading Railroad Company?—A. Yes, sir; Mr. Shearn asked me: "Do you not know it has not varied 2 per cent over what you were allotted?" I say, "Very likely it has not." Two per cent is 10 per cent of the whole. The understanding arrived at then was on the eastern situation. Looking to the history of all the roads for twelve or twenty years, we found that whether we were working in reasonable agreement or whether we were working against each other it came to about the same thing; if we fought for tonnage we did not get any more. It was simply an understanding based on the past—based on the capacity of our collieries and based on the capacity of the company to sell coal, and that was about what each could get under any circumstances. That was really the gist of all those things. We looked up what we had done in the past and we came to the conclusion that was about what was fair to do.

Q. And you were going to endeavor to live up to what you thought was fair?—A. Yes, sir.

Q. What was the occasion which brought the presidents of these roads together?—A. I do not remember. They came together to discuss different questions.

Q. Each one of these roads as you have named them before were competing for the trade?—A. Yes.

Q. And each regarded the other as a competitor?—A. Yes.

Q. You wanted to bring about some arrangement so you would not be cutting each others' throats?—A. Yes; as far as I was concerned, as I said some time ago, the coal produced by the Reading Coal Company and by The Lehigh Coal and Navigation Company was coal that was costly to mine, and The Lehigh Coal and Navigation Company had been through some years when it was not able to pay its interest charges, and was just beginning to emerge from that past difficulty. The Reading Company was in the same position. It was its duty to try to earn its interest.

Q. And the cutthroat competition, as you regarded it, with these other roads, made it impossible for you to thrive, and you wanted to get together in order to do away with that?—A. Yes, sir; we wanted to get a living profit out of our business.

Q. And this was the reason why these presidents came together and entered into this agreement?—A. Yes, sir; I say they did not enter into an agreement.

Q. General understanding, as you call it?—A. Yes; there was nothing but a general understanding. It was never lived up to.

Q. Subsequently to this meeting in 1896 all of these interests reported to a common source their production and sales of coal, did they not?—A. Yes, sir.

Q. What was that common source to which they reported?—A. They reported to Mr. Ruley, who was appointed statistician of the coal companies.

Q. In charge of what is known as the bureau of anthracite coal statistics?—A. Yes.

Q. All this information was reported each month?—A. Yes.

Q. And then what did Mr. Ruley do with this information?—A. He tabulated it and sent it out to the different parties who were interested in it.

Q. He showed in this tabulation exactly what percentage of the whole each one of these interests had produced, did he not?

(Judge Campbell objected to the form of the testimony and its substance. The statements of tabulation themselves should be produced if they are competent. The form and manner of examination objected to.)

A. Yes, sir.

Q. Those statements were sent out each month?—A. Yes, sir.

Q. Were the prices which each one of these interests got for its coal also reported to Mr. Ruley?—A. I do not remember. I do not think they were. I do not remember that.

Q. How long did that method of dealing with these statistics continue?—A. While I was president.

Q. At least until you ceased to be president in 1901?—A. Yes, sir.

Q. When you received one of these reports from Mr. Ruley at the end of each month showing what proportion of the total amount of coal you had produced during the preceding period, if you found that the amount that you produced exceeded the percentage which had been allotted to you, twenty and five-tenths, what course did you take with reference to that excess thereafter?—A. We did not take any particular course. If we had run a little ahead, we tried not to run ahead the next month.

Q. You tried to reduce your amount the next month, so that the two months together would bring you within the proper percentage, did you not?—A. Not for months. We tried to have a rule that the year should be about the percentage.

Q. Did you have cause to believe that at least some of the other parties in interest did just as you did?—A. I do not know anything about what they did at all.

Q. Who were the parties who returned the statistics each month to Mr. Ruley and got from him in return his statement made up in the way you have suggested?—A. I do not know. I do not recall the lot of them.

Q. Can you not give us a statement of who the parties are that sent them in?—A. No; I do not know at all.

Q. Was the Lehigh Valley Railroad one of the parties?—A. All those coal interests sent them in.

Q. Give us as near as you can remember.—A. They were the names you read a little while ago, the Pennsylvania Railroad, the Reading, the Jersey Central, the Lehigh Valley, the Delaware, Lackawanna and Western, the Delaware and Hudson, the Erie, and the Ontario and Western.

Q. They were all parties to this general understanding?—A. They all acted on that. They all sent their information to the bureau of statistics.

Q. You were president of the Reading Company in 1900, when it acquired shares of the Lehigh Valley Railroad Company, were you not?—A. I was president of the Reading Company in 1900, but I do not remember acquiring shares of the Lehigh Valley Company.

Q. Do you remember when it did acquire those shares?—A. No; I do not.

Q. You have no recollection about the time those shares were acquired?—A. No; I do not think they were acquired in my presidency. I am not certain.

Q. You have no recollection of the matter at all, if it was done then?—A. My recollection is it was not done in my presidency.

Q. Do you remember when it was done?—A. No; I do not.

Q. You have been a director of the Reading Company since its inception?—A. Yes.

Q. Do you know why it was done?—A. No; I do not.

Q. Do you not remember that the Reading Company, The Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, and the Erie Railroad Company all about the same time acquired shares in the Lehigh Valley Railroad Company?—A. No; I do not. I did not know that the Jersey Central ever had any.

Q. You have no knowledge about the matter at all?—A. No. I think you are wrong about the Central Railroad of New Jersey. It never acquired any Lehigh Valley shares.

Q. Tell us what you know about the origin of what are called the percentage contracts under which The Philadelphia and Reading Coal and Iron Company purchases coal from various producers.

Judge Cassatt. In support of a motion to the court, to be made on the filing and publication of the report of the examiner, to strike out and suppress incompetent, immaterial, and irrelevant testimony, the defendants, the Reading Company, The Philadelphia and Reading Coal and Iron Company, and the Philadelphia and Reading Railway Company, severally object to the introduction of all testimony or evidence relating to the purchase and sale of anthracite coal produced or to be produced and to be delivered in Pennsylvania, because—

First. It appears on the face of the petition that the said contracts of purchase and the subject-matter thereof severally are confined to the sale and delivery in Pennsylvania of anthracite coal produced or to be produced within the State of Pennsylvania, without regard to the ultimate markets to which the same were to be consigned or sold by the purchasers, and that they were and are wholly local and domestic contracts, to which the act of July 2, 1890, is inapplicable.

Second. The subsequent sale and consignment, after the completion of the delivery under the purchase contract, of a portion of the purchased coal in the interstate commerce, is immaterial and irrelevant to the issues well and properly raised by this suit.

Third. It is not the immediate and direct effect of these contracts to affect interstate or foreign commerce in any way. The subsequent introduction of portions or parts of it in interstate or foreign commerce is wholly incidental, and therefore immaterial and irrelevant.

Fourth. All evidence bearing upon the contracts and ultimate sale and distribution of the product is immaterial and irrelevant without proof of the alleged combination in restraint of interstate or foreign commerce or trade.

I should like to have the stipulation of the counsel for the Government to the effect that this objection may be considered as interposed to all testimony offered in connection with the so-called 65 per cent or other percentage contracts.

Mr. McReynolds. It is so understood.

A. I do not know that I know anything about the origin of them. I think the first of them were made—I am speaking without accurate knowledge now—I think the first of them were made before I be-

came president. The questions that came up were not debated before me. I think they were in the previous administrations.

Q. Had you nothing to do with them?—A. No. I had nothing to do with them, except I assented to such as were made from time to time. I had nothing to do with the original contracts at all. As I recollect, the Lehigh Navigation Company never made any with any railroad company. I do not think that I had any hand in the making of the contracts. I think it was done in Mr. McLeod's or Mr. Corbin's time. I do not know when it began.

Q. While you were president of The Lehigh Coal and Navigation Company that company made no such contracts with any railroad company?—A. No, sir. It has none to-day, and never had any.

Q. While you were president of the Philadelphia and Reading Railway Company were what are called percentage contracts made from time to time with various producers along the line?—A. I have no doubt there were some made. I think the most of them were made before I became the president.

By Judge CAMPBELL:

Q. Made by the railway company?—A. Not by the railway company. No; by the coal and iron company.

By Mr. MCREYNOLDS:

Q. It was hard for you to tell when you were acting for the railway company and for the coal company, was it not?—A. No. I am not fixing either matter.

Q. I do not mean that. I mean when you were the president of both it was hard for you to tell in what capacity you were acting?—A. No. Not at all. The railroad company and the coal company were entirely separate and so treated.

Q. Were you acquainted with the general outline of these percentage contracts?—A. Yes, sir.

Q. Prior to the year 1900 were those contracts made for a specified number of years during which they were to run?

(Objected to by Judge Campbell, as the contracts speak for themselves.)

Mr. WARREN. I object, so far as it may be regarded as applicable to any of the clients I represent here, as being not only incompetent and improper to elicit information with reference to writings in any such way as this, but as well immaterial.

By Mr. MCREYNOLDS:

Q. What I want to know is whether the general policy of the coal and iron company while you were its president was to make those contracts for a definite period?—A. I suppose it was.

Q. Why was the change of policy made upon the part of The Philadelphia and Reading Coal and Iron Company in 1900 so that these contracts were made to cover the life of the mine?—A. I do not remember that such change was made at all at the date you name.

Q. Do you not know that the existing contracts between The Philadelphia and Reading Coal and Iron Company and the various outside

producers contemplate purchases of the output during the entire life of the mine on a 65 per cent basis?—A. No; I do not.

Q. You are not acquainted with those contracts?—A. No. I suppose, not being acquainted with them, it is hardly proper that I should say anything about them. I really do not know that it is so.

Q. Whose business was it while you were president to take care of the matter of contracts of that sort?—A. Mr. Henderson.

Q. Who is Mr. Henderson?—A. Mr. Henderson was then one of the vice-presidents of the coal and iron company, and was at the head of the sales department.

Q. What is his name and where does he live?—A. Charles E. Henderson. He lives in Maryland somewhere. He is not in the service now.

Q. Were you present at any conference of parties representing all the so-called, in a general way, anthracite interests when there was a discussion as to the form of these 65 per cent contracts which are now in existence?—A. No, sir; never.

(At 1 o'clock a recess was taken until 2 o'clock p. m.)

Q. I believe I asked you whether you had a copy of the minutes of the meetings of certain parties representing the various anthracite coal interests held in the years 1884, 1885, and 1886 referred to in an appendix to the report of the congressional committee made in 1889, and which you were asked to produce by the subpœna duces tecum, and you replied that you did not have them and did not know where they were?—A. No, sir; that is correct.

Q. Were you one of the receivers of The Philadelphia and Reading Railroad Company appointed by the federal court at Philadelphia in 1893?—A. Yes, sir. I was appointed in 1893.

Q. Who were the other receivers?—A. Judge Paxson and Mr. Lowber Welsh.

Q. You were also receiver during the same time, were you not, of The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir.

Q. As the president of the Reading Company you made a report to its stockholders in 1898, did you not?—A. Yes, sir.

Q. I show you now what purports to be the first annual report of the Reading Company for nineteen months, December 1, 1896, to June 30, 1898, signed by you as president, and ask you to look at it and see if that is the report that you made.—A. It appears to be; yes.

Q. That is one of the printed published reports of the Reading Company for that time, signed by you as president, is it not?—A. Apparently so; yes.

Q. I do not care to introduce this whole report, but I read this from it in order to make it a part of the record. I read the following from the report, commencing with the first:

"The Reading Company submits, for the information of its stockholders, the following report, not only on the affairs of that company,

but also on those of the Philadelphia and Reading Railway Company and The Philadelphia and Reading Coal and Iron Company, of which corporations substantially all the stock is owned by the Reading Company. This report includes the operations of the said two companies from November 30, 1896 (the date on which the property now operated by them respectively passed to them), to June 30, 1898, a period of nineteen months. The fiscal year of the Reading Company, as well as of the railway company and of the coal and iron company ends on June 30.

"In this report the business of the three companies will be discussed without constant reference to the fact that each of the three companies above named is entirely distinct from the other, has a distinct organization, and is engaged in a distinct occupation. This course is especially necessary in comparing the revenues of the last year with those of former years, as the properties formerly held by the railroad company and by the coal and iron company have now been distributed between the three Reading companies, so that only by comparing the revenues and expenditures of the three companies for the period under consideration with those of the two companies which formerly held the same properties can we arrive at an intelligent comparison of the results under the present ownership with those attained under the former ownership.

"In order to arrive at a correct understanding of the business affairs of the several companies it will be desirable to outline, in a general way, their organization and scope.

"In the report of the receivers of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company for the year ending November 30, 1896, it is stated that the general mortgage of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company had been foreclosed, and that under the direction of the circuit court of the United States all the properties and estates of those companies had been sold by the trustee of the general mortgage and by the receivers, and that the purchasers of the property at that sale had organized a new company, Philadelphia and Reading Railway Company, to which and to the Reading Company and The Philadelphia and Reading Coal and Iron Company possession was transferred at midnight on the 30th of November, 1896.

"The Reading Company owns practically the whole capital stock of the Philadelphia and Reading Railway Company and of The Philadelphia and Reading Coal and Iron Company, and all of the other stocks and securities which were acquired by the purchasers under the sale made by the trustee and the receivers. It also owns the $20,000,000 purchase-money mortgage bonds issued by the Philadelphia and Reading Railway Company, the locomotives, cars, steam colliers, tugs, and barges, constituting the railway and marine equipment, and all the real estate of the old Philadelphia and Reading Railroad Company which was not appurtenant to the railroad itself.

This, of course, does not include depots, rights of way, etc., which belong to the railway company.

"The Philadelphia and Reading Railway Company, which was organized under the act of the legislature of Pennsylvania of May 31, 1887, owns all the railroads formerly belonging to The Philadelphia and Reading Railroad Company, and it controls the roads heretofore leased to that company, either by transfer of the old leases or by new leases made since November 30, 1896. It leases from the Reading Company the railway and marine equipment which it uses in the conduct of its business, and a number of wharves and warehouses on the Delaware River between South street and Queen street, Philadelphia.

"Under the foreclosure sale the charter of The Philadelphia and Reading Coal and Iron Company was preserved and it was purchased at the sale. The purchasers, after the acquisition of the charter and franchises, conveyed all the coal lands and collieries which they had acquired at the sale to The Philadelphia and Reading Coal and Iron Company. Its business consists exclusively of the mining and sale of coal.

"The joint operations of the three companies for the nineteen months since November 30, 1896, resulted in net earnings which were sufficient to meet all interest and other charges, all expenditures for betterments and improvements of every kind, and left a surplus of $123,293.12."

Will you identify that as a part of the report which you made in 1898?—A. It appears to be.

Q. And the facts stated by you at that time you knew to be true and were in harmony with the facts?

Judge CAMPBELL. I object to the form of proof. The declarations of the president and secretary of the Reading Company in making its reports are not proper or competent evidence of the facts to which they allude, there being better evidence; for instance, the stock books of the Reading Company will show that that company is not the owner of all the capital stock of either The Philadelphia and Reading Coal and Iron Company or the Philadelphia and Reading Railway Company, but will show, as the lists which have now been presented to the Government's counsel will disclose, they are all registered in the name of a trust company in New York as trustees.

I object to this form of proof as to the holdings of the capital stock of the Reading Company, The Philadelphia and Reading Coal and Iron Company, and the Philadelphia and Reading Railway Company as not being the best evidence.

By Mr. MCREYNOLDS:

Q. You were the president of the company when you made this report, and you made it to your stockholders for the purpose of communicating to them the facts as you understood them?—A. Yes, sir.

Q. This report states that the charter of The Philadelphia and Reading Coal and Iron Company was preserved and it was purchased

at the sale. Do you remember what that means?—A. It seems to me the statement is quite plain there. What difficulty do you see about it?

Q. The conditions were that the property of the concern was in the hands of the receiver?—A. Yes, sir.

Q. And that was so?—A. Yes, sir.

Q. And purchased evidently by somebody. What do you mean by preserving the charter of a bankrupt corporation?—A. That I am not lawyer enough to tell.

Q. The Reading Company was originally the Excelsior Company, chartered by special act of the legislature and the name of the Excelsior Company was afterwards changed to the National Company, and then to the Reading Company?—A. I believe so; yes.

Q. Do you know anything about what the business of the old Excelsior and National Company was?

Judge CAMPBELL. I object to this testimony, both as to its form and as to the method of its proof. If the evidence embodied in the question is competent and material here at all, the witness is not shown to have any knowledge on the subject.

A. I do not.

By Mr. MCREYNOLDS:

Q. Do you know anything about the business of the old Excelsior Company?—A. No; I do not.

Q. Do you know anything about the business that the company did while it was running under the name of the National Company?—A. No, sir.

Q. Do you know how that company's stock was acquired by the parties interested in the Reading Company?—A. No, sir.

Q. You do not know anything about the details of that manipulation?—A. No; I do not recall them.

Q. Who managed them?—A. That I do not know.

Q. Did the old National Company have any business?—A. You are asking about matters that are entirely beyond my knowledge.

Q. Was it a going concern at all?—A. I can not testify as to that.

Q. Who would know?—A. I do not know.

Q. Were you president of the Reading Company when it acquired a majority of the capital stock of The Central Railroad Company of New Jersey?—A. Yes, sir.

Q. Did you negotiate that purchase?—A. No.

Q. Who did?—A. I don't know. I did not.

Q. Do you remember when it took place?—A. Yes. It took place shortly before I left the presidency, in 1901.

Q. You do not know who negotiated it?—A. No.

Q. Who suggested it?—A. I do not know anything about the negotiation as to the acquirement of that stock.

Q. Yet you were the president of the company. Were you not the party who would naturally have to do with that sort of transaction?—A. I did not do it.

Q. Who did?—A. I do not really know how it was done.

Q. Do you know the purpose of it?—A. Not except cementing the company's interests and giving it a permanent outlet at New York.

Q. In 1901 the Philadelphia and Reading Railway was operating a system which led from the coal fields in Pennsylvania to New York Harbor at Port Reading?—A. Yes, sir.

Q. And the Central Railroad of New Jersey was also operating a road which led from the same coal field to Jersey City on New York Harbor, was it not?—A. Not from the same coal fields. The two did not carry the same coal.

Q. That was not what I asked you. I said from the same coal field. They both reached the middle coal field, did they not?—A. No; the Reading did not reach the middle coal field.

Q. Did the New Jersey Central reach the southern coal field?—A. It reached the eastern end of it. It reached The Lehigh Coal and Navigation Company's properties.

Q. To that extent at least they both reached the same coal field or region?—A. The territories of the two were not the same at all.

Q. You mean they were not identical, but did not the Reading reach the eastern part of the middle coal field?—A. No; it did not reach The Lehigh Coal and Navigation Company's property at all.

Q. Did not the Reading reach the middle field?—A. No, sir; it did not reach the middle field at all.

Q. It did not reach anything but the southern field?—A. No.

Q. But the Jersey Central reached the middle field?—A. Yes. And the eastern end of the southern field.

Q. So the Jersey Central and the Reading both reached the southern field?—A. Yes; they both reached the southern field.

Q. And both carried from that field over their own tracks anthracite coal to tidewater on New York Harbor?—A. Yes.

Q. And had been doing that thing for many years?—A. Yes.

Q. Both had termini upon the waters of the New York Harbor?—A. Yes.

Q. They both also were interested in coal-mining companies, were they not?—A. No. The Jersey Central was not interested in coal-mining companies. It was interested in coal mining.

Q. Did not the Jersey Central at that time own The Lehigh and Wilkes-Barre Coal Company?—A. Yes.

Q. Was not the Lehigh and Wilkes-Barre Company a mining company?—A. Yes, sir.

Q. Shipping over the New Jersey Central?—A. Yes, sir.

Q. And selling at New York Harbor?—A. Yes, sir.

Q. Was not The Philadelphia and Reading Coal and Iron Company mining coal, and shipping it over The Philadelphia and Reading Railroad Company to New York and selling it there?—A. Yes, sir.

Q. At this time, in 1901, the Reading Company purchased in some way, the details of which you do not know, a majority of the stock of The Central Railroad Company of New Jersey?—A. Yes, sir.

Q. You say that was done for the purpose of consolidating their interests and bringing them into nearer and closer harmony?—A. I said it was done to cement the company's interests and give them a permanent outlet on the New York Harbor.

Q. Did not The Philadelphia and Reading Railroad Company have an outlet on New York Harbor for its coal long before that?—A. Not a satisfactory one. It was not as good as the one at Jersey City.

Q. Is not the Philadelphia and Reading Railway Company now using its Port Reading tracks for the shipping of coal?—A. Yes, sir.

Q. Has it not always used them since that road was built down from Bound Brook, N. J.?—A. Yes, sir.

Q. It had that road from Bound Brook, N. J., at the time they bought this majority of stock of the New Jersey Central, did it not?—A. Yes.

Q. And had been using it for years, had it not?—A. Several years; yes.

Q. Do you know what the Reading Company paid for that majority of stock in the New Jersey Central, how much per share?—A. No; I can not say from memory.

Q. Do you know how it was paid for? I want to know whether the Reading Company issued to the holders of that stock the securities of the Reading Company, or whether it paid cash for them?—A. It made an issue of bonds. I do not know how the stockholders were paid. I know that the Reading Company made an issue of bonds to cover that; but how the stockholders were protected I do not know.

Q. But you do know the Reading Company made an issue of bonds and hypothecated this stock of the New Jersey Central Railroad Company to secure those bonds?—A. Yes, sir.

Q. And in that way, without going into the details of how the transaction was actually worked out, it paid for the stock of the New Jersey Central Railroad Company?—A. Yes.

Q. Who was the financial representative of the Reading Company in these transactions?—A. I do not know exactly what your question refers to.

Q. Did you not have a banker or some financial representative in New York who was managing it?—A. Yes, sir. Our banker here was J. P. Morgan & Co.

Q. Did they manage this transaction?—A. That I do not know.

Q. Did they buy or float these bonds, or sell them?—A. I suppose they did.

Q. Were they really the parties who were in control of the Reading Road, and were you simply the operating man, or how was that?—A. I do not know whether to say that they were the holders of the stock of the Reading Company. They were not the main holders of the stock, I should imagine.

Q. Who were the main holders of the stock of the Reading Company?—A. I suppose they were individuals—individuals who had been the holders of the old companies' stock.

Q. Ever since the reorganization in 1896 the Reading Company has owned substantially all of the shares of the capital stock of the Philadelphia and Reading Railway and The Philadelphia and Reading Coal and Iron Company?—A. Yes.

Judge CAMPBELL. I object to this form of proof of that fact, as it can only be competently and legally shown by the stock register of the company. The declaration of this witness is not competent evidence of the state of those holdings. Counsel for the Government have a proper statement showing who holds this stock.

By Mr. MCREYNOLDS:

Q. Has the Philadelphia and Reading Railway Company had stockholders' meetings from time to time, or did they have while you were president?—A. Yes, sir.

Q. How was the stock owned by the Reading Company voted at those stockholders' meetings?—A. The transactions were generally by the board of directors.

Q. Do you mean by the board of directors of the Reading Company?—A. No; of the Reading Railway Company.

Q. I am speaking now of the stockholders' meetings of the Philadelphia and Reading Railway Company. You say they were held from time to time.

Judge CAMPBELL. I object to this form of proof. The records of the stockholders' meetings are the only competent and proper form of evidence to prove the facts.

A. Yes, sir.

Q. At these stockholders' meetings of the Philadelphia and Reading Railway Company how was the stock which belonged to the Reading Company voted? Who voted it?—A. Somebody who held authority to.

Q. Who from?—A. From the Central Trust Company, I imagine.

Q. Do you mean the stock had been hypothecated with the Central Trust Company?—A. No; it was in the hands of the Central Trust Company. It was part of the general mortgage security, I think.

Q. One of these stockholders' meetings of the Reading Railway Company is in session; substantially all the stock, as you said, was owned by the Reading Company; it might have been hypothecated. How was it voted in the meetings of these stockholders of the Reading Railway Company?—A. Voted by proxy.

Q. Who was the man who held the proxy?—A. I suppose the Central Trust Company.

Q. Who held the proxy; what individual?—A. I held the proxy.

Q. You were the president of the Reading Company?—A. Yes, sir.

Q. You held the proxy to vote the shares which the Reading Company in the last analysis owned?—A. Yes.

Q. And you actually voted those shares in the stockholders' meeting of the railway company?—A. As matter of fact, I do not know whether I did or not. I do not know who held the proxy. I do not know whether I held it or whether some other officer of the company held it. I do not really know.

Q. Whoever held it got his authority from somewhere. Where was that?—A. I should imagine it was the Central Trust Company, but I do not know.

Q. Why would the Central Trust Company be giving it to somebody?—A. I do not quite catch what your question is. Why would the Central Trust Company?

Q. Yes, why would the Central Trust Company be giving proxy to vote stock?—A. Why shouldn't they if they held it?

Q. Do you mean the stock was transferred on the books of the Reading Company into the name of the Central Trust Company?—A. Now you are asking me about things that I do not remember. I should suppose the records of the company would be the best evidence.

Q. Were you always present at the stockholders' meetings of the Philadelphia and Reading Railway Company?—A. Yes, sir.

Q. The stock which belonged ultimately to the Reading Company was always voted in some way?—A. Yes, sir.

Q. Whether the proxy came from the directors of the Reading Company or the Central Trust Company you do not know?—A. No; I do not.

Q. But you generally held it?—A. I do not know whether I did or not. I do not know whether I did or whether another officer of the company held it.

Q. Were there stockholders' meetings of The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir.

Q. Did you attend them?—A. Yes, sir.

Q. How were those shares voted?—A. I would have to make the same answer there. I do not know whether the person who held that proxy voted them. Whether he did or some officer, I do not remember.

Q. But either you or some other officer of the Reading Company always held that proxy?—A. I do not know that an officer of the Reading Company did hold it.

Q. After the stock of The Central Railroad Company of New Jersey was acquired by the Reading Company, who voted that in the meeting of the stockholders of the Central Railroad?—A. That was after my presidency was over.

Q. You never attended one of those meetings?—A. Yes; I attended them, but I was not the judge of election.

Q. They were represented there, of course?—A. Yes. I do not know, by the way, that I was ever at a meeting. I guess I was never at an annual meeting of The Central Railroad Company of New Jersey.

Q. Are you not a director of The Central Railroad Company of New Jersey?—A. Yes, sir.

Q. Have you been a director of The Central Railroad Company of New Jersey ever since the majority interest was acquired by the Reading Company?—A. Yes. But I do not think I attended the annual meetings.

Q. Did the Reading Company's directors, from time to time, determine who should be the directors of the Philadelphia and Reading Railway Company and of the Coal and Iron Company?—A. The question never came up in the Reading board.

Q. But they discussed it among themselves?—A. Not that I know of.

Q. Did not the Reading Company undertake to say how its stock should be voted at these meetings and for whom?—A. Yes.

Q. How did it undertake to do that?—A. I suppose it was voted year after year by the same parties, no changes made by the board.

Q. It was tacitly understood that that was what should be done with it?—A. I suppose so.

Q. When you first knew the coal regions of Pennsylvania, what systems of railroad were operating in there?—A. The same ones that are there now.

Q. Have not some roads been built in there within the last twenty years?—A. There were some roads built into the northern coal field. The New York, Susquehanna and Western Road was built twenty or thirty odd years ago. The New York, Ontario and Western has extended there. But those were quite out of my bailiwick.

Q. Except those, you understand that since you have known the coal fields, the systems have been the same?—A. I think so; yes.

Q. You were the president of the Reading company when the New York, Wyoming and Western Railroad was projected, were you not, in 1898 or 1899?—A. I was president in 1898 and 1899; yes.

Q. Did you know anything about the proposed building of that New York, Wyoming and Western Road?—A. Only in a general way.

Q. What steps did you take in reference to it?—A. I did not take any.

Q. You made no effort whatsoever to defeat the building of that road?—A. No.

Q. How was the building of that road defeated?

Mr. WARREN. I object to the question as incompetent and immaterial. I further object to the question because there is no evidence that it was defeated. This is an assumption of fact not yet established, the fact being to the contrary.

A. I do not know. It was something that the Reading Railroad Company had very little to do with.

By Mr. MCREYNOLDS:

Q. What did The Philadelphia and Reading Railroad Company have to do with defeating the building of that road?

Mr. WARREN. I object to the question, because it is an assumption that The Philadelphia and Reading Railroad Company had some-

thing to do with defeating the road, of which there is no evidence or averment in the government's bill of complaint, and there is no evidence, so far, of knowledge on the part of the witness of the defeat of the construction of that road.

A. I do not think it had to do with it.

By Mr. McREYNOLDS:

Q. It had nothing to do with it?—A. I do not think it had.

Q. You were aware of the fact that the road was projected?

Mr. WARREN. I object, because it is plainly matter of hearsay, and, therefore, incompetent testimony. The question assumes that the witness is aware of that which he can not be aware of, except by association, not being established that he is a party to the organization of the alleged projected road, and therefore it is an inquiry into clearly incompetent evidence.

A. Only by general rumor. I never heard the question discussed.

By Mr. McREYNOLDS:

Q. Where was the road to go from?

(Objected to by Mr. Warren unless it is shown that this witness had some knowledge of it.)

A. I do not know.

Q. Do you know anything about the Delaware Valley and Kingston Railroad that was projected?—A. No, sir; I never heard of it.

Q. You do not know anything about that?—A. No, sir.

Q. Do you know anything about when and why the Reading Company acquired an interest in The Temple Iron Company?—A. I do not know when that was done. I think it was after my presidency. I am not sure.

Q. I am advised it was done in 1899; that interest was acquired. Did you have anything to do with it, or did you have any knowledge of it?—A. No. The Reading Company originally owned The Temple charter. I had nothing to do with the negotiations that led to The Temple Iron Company's creation. I do not know anything about it.

Q. Did you know anything about the business of The Temple Iron Company before the Reading Company acquired an interest in it?—A. No.

Q. You do not know what it was doing?—A. No; I do not. I believe it owned an iron furnace.

Q. Did it own any coal property?—A. I do not know whether it did or not. I do not think it did.

Q. Were you a director of The Temple Iron Company?—A. I may have been.

Q. Were you not president of The Temple Iron Company?—A. I do not know whether I was or not.

Q. Are you connected in any way with the Temple Iron Company now?—A. Yes.

Q. How?—A. I am a director.

Q. What is its business now?—A. Mining coal.

Q. You are a director of The Temple Iron Company?—A. Yes, sir.

Q. How long have you been such?—A. Several years.

Q. What interests are you supposed to represent?—A. I have an interest in the mines.

Q. Do you mean you are one of the stockholders?—A. Yes.

Q. You are also supposed to represent the Reading interests, I presume?

Mr. WARREN. I object to that question, because suppositions are not of any value.

By Mr. MCREYNOLDS:

Q. Do you represent the Reading interest?—A. I do not know whether I do or not. I should imagine the president of the company represented the Reading interest.

Q. Who is the president of the Reading Railway Company now?—A. Mr. Baer.

Q. Is he president of the Reading Company?—A. Yes, sir.

Q. Do the directors of The Temple Iron Company have meetings from time to time?—A. Yes.

Q. How often?—A. Once in three months, perhaps.

Q. They do what Mr. Baer tells them to do?

Mr. WARREN. I object to that as being entirely irrelevant.

A. Mr. Baer does not tell us what to do. He shows the way in which the company is running and we declare dividends or order the payment of interest.

By Mr. MCREYNOLDS:

Q. Is that all your board does?—A. That is the main thing we do; yes.

Q. Mr. Baer is the executive head of the company, is he not?—A. No; the executive head of the company is Mr. Law.

Q. Mr. Baer is president, is he not?—A. Mr. Baer is the president, I think; yes.

Q. What becomes of the coal that is mined by The Temple Iron Company?

Mr. WARREN. I object until the witness is shown to have knowledge of the shipments of coal by the Temple Iron Company. It is not to be assumed on a conclusion incorporated in a question. Therefore, the question is incompetent.

A. I do not know, except in a very general way, that the coal—there are other persons much more conversant with it.

By Mr. MCREYNOLDS:

Q. You are a director. What becomes of the coal mined by The Temple Iron Company?—A. It is sent to market by the several roads. By the Lehigh Valley, the Erie, the Delaware, Lackawanna and Western, and some other roads, possibly. I do not know.

Q. Where are the collieries of The Temple Iron Company located?—A. In the northern coal field.

Q. The eastern or western part of the northern coal field?—A. They are east of Wilkes-Barre.

Q. Has The Temple Iron Company any arrangement by which it divides among the carriers that you have named this coal freight in certain proportions?—A. I do not know that there is. I do not know what the details of its business are, as they do not come to me.

Q. Does any of the coal mined by The Temple Iron Company go to market over the Philadelphia and Reading Railway Company's lines?—A. I think not.

Q. The Philadelphia and Reading lines do not go into the region where its collieries are?—A. No.

Q. Do you know why the Reading Company acquired this stock in The Temple Iron Company?—A. No.

Q. Were you advised of that when it was done?—A. Not excepting in a very general way.

Q. Was it laid before your board of directors?—A. The board of directors of the Reading Company?

Q. Yes.—A. I do not remember that it ever was.

Q. You were the president of The Philadelphia and Reading Coal and Iron Company. Was that company selling coal in New York?—A. The Coal and Iron Company?

Q. Yes.—A. Yes.

Q. The coal was delivered at Port Reading, I understood you to say?—A. Yes, sir.

Q Was it sold at Port Reading?—A. I do not know. I do not know what the terms of the sale were, whether it was a price at Port Reading or a price at the point of delivery.

Q. The coal that was sold for the New York market, was that sold at Port Reading or was it sold delivered at some other point in New York?—A. I do not know.

Q. How were the prices at which that coal was sold fixed?—A. By instructions to the coal selling agent.

Q. Who gave these instructions?—A. I suppose Mr. Henderson gave them. He was the officer in charge of the coal and iron company's business.

Q. Was he the vice-president?—A. Yes.

Q. Were those prices substantially the same prices that were made by coal companies in other coal districts of Pennsylvania?—A. Substantially; yes.

Q. Did you receive, or did The Philadelphia and Reading Coal and Iron Company receive from month to month circulars published by the other companies showing their coal prices?—A. I think it likely they did. I do not know as to the details.

Q. Did your company make any differential because of the barge charges from Port Reading to New York?—A. I do not know exactly that I know what the force of your word "differential" is. When we sold to deliver alongside of the docks in New York, doubtless a part of that money went to the barge. When we delivered to barges other than our own at Port Reading, doubtless there was some allowance made for the transportation.

Q. During the years that you were president of the Philadelphia and Reading Railway Company were its freight rates for transporting anthracite coal from the southern coal field substantially the same as the rates for transporting coal from the northern coal field by the roads that entered there? I mean transporting to New York Harbor?—A. I do not know whether they were or not. They were not materially different, but I do not know in detail how closely they were connected. I do not think the rates were all the same from the different parts of the northern coal field.

Q. Do you mean there was a difference of a few cents a ton possibly?—A. Possibly; yes.

Q. Did you not make some allowance in your freight rate on account of the haul from Port Reading to New York?—A. I do not really know how that was divided. I suppose our rates of delivery at New York were substantially the same. In that case, as I said before, there would be some allowance made for the transportation there from the Reading to New York.

Q. Since 1896 have not all these coal-carrying roads which bring anthracite coal directly from the coal regions to New York Harbor had the same rate of freight, or substantially the same.

Judge MOOT. I object to the question as incompetent. The tariff sheets themselves are the only competent evidence on the subject. The understanding of the witness is of no earthly consequence.

Judge CAMPBELL. I also object to this evidence as not being in proper form. The tariff sheets themselves during all this period are the only proper evidence of what the rates were.

A. I do not know.

By Mr. MCREYNOLDS:

Q. Was it not your business to post yourself about what your competitors were doing in the way of rates?—A. Since 1896?

Q. Yes.—A. Not to the present time, certainly.

Q. But, while you were president of the Reading Company or the Reading Railway Company?—A. I understood you to ask me from 1896 to the present time?

Q. I did. While you were president of these Reading companies were the rates substantially the same?—A. I suppose they were. That was a detail that was in the hands of the vice-president, and unless he would ask my opinion about it, I would not have known.

Q. Did you have anything to do with making the rates of the Philadelphia and Reading Railway Company while you were president?—A. On coal?

Q. Yes.—A. I do not think I did.

Q. Do you know anything about how rates are made, and what are the things that determine what the rates shall be?—A. I suppose the officer in charge of that would consult the president with regard to it if there was a change required or desired. I suppose, as a rule, the president would not, unless the officer asked the question or reported that there had been some change by other parties. I do not

suppose he would have much to say about it. The officer in charge would not change them without authority.

Q. You could give him that authority as president?—A. Yes, sir.

Q. You do not recall distinctly, but I asked you, I think, why The Philadelphia and Reading Coal and Iron Company began to take contracts from individual owners for the purchase of the output of the collieries during their entire lives instead of for a limited period?—A. I think that has been done since my presidency.

Q. When you were president the policy was to take them for a limited time, I think you said.—A. So far as I remember, it was. Contracts made with the owners of property for leasing collieries are very largely made now for the life of the property, because the owner wants to make it the duty of the person mining it to work out the property. He does not want them to work ten or twenty years and, when the property is not in as good condition, to cease working it.

Q. What was the purpose of taking these contracts at all?—A. They were not during my time.

Q. There were contracts existing during that time, were there not?—A. Yes, sir.

Q. Many of them renewed?—A. There might have been some of them renewed. I presume they were.

Q. What was the purpose of those contracts, do you know?—A. Partly, I suppose, to enable the miner to go on mining the coal. We bought the coal from him and relieved him of the trouble of keeping up a selling organization, or collecting debts of other people to him.

Q. Who is in charge of the direct operations of The Philadelphia and Reading Coal and Iron Company now, if you know?—A. The person who is in charge of the mining operations is Mr. W. J. Richards, at Pottsville, Pa., and the person who is in charge of the sales is R. J. Montgomery, at the Reading Terminal, Philadelphia.

(Mr. McReynolds stated that he was through with the examination of the witness for the present, but reserved the right to recall Mr. Harris at some future time if so desired.

Counsel representing the defendants reserved the right to cross-examine Mr. Harris after the Government shall have finished its examination, or to recall him for cross-examination.)

W. A. LATHROP, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Please state your age, residence, and occupation.—A. My age is 54; I am president of The Lehigh Coal and Navigation Company; my home is in Wilkes-Barre, Pa.

Q. How long have you been president of The Lehigh Coal and Navigation Company?—A. Since March, 1907.

Q. Who was your predecessor?—A. Lewis A. Riley.

Q. Is he living?—A. Yes, sir.

Q. Where is he?—A. He lives in Philadelphia.

Q. How were you associated with the company before you became its president?—A. I was not associated with it.

Q. What had been your occupation before that time?—A. For some five or six years before that I was president of the Pennsylvania Coal and Coke Company, a bituminous company.

Q. Had you never been connected with the anthracite coal business prior to your going to The Lehigh Coal and Navigation Company?—A. Yes, sir. Between 1889 and 1901 I was general superintendent of The Lehigh Valley Coal Company—had charge of its mines.

Q. Is The Lehigh Coal and Navigation Company a Pennsylvania corporation?—A. Yes, sir.

Q. Organized under the general or a special act?—A. Under a special act.

Q. How many collieries has it?—A. Ten.

Q. Where are they located?—A. Located in the southern coal field, in Carbon and Schuylkill counties.

Q. About what has been its production of coal during the last three years?—A. It produced last year, in round figures, three millions of tons, and the two or three years before that, my recollection is, about two and a quarter millions of tons.

Q. What system of railroad serves these collieries?—A. The New Jersey Central and the Philadelphia and Reading.

Q. Do both of these railroads reach the same collieries in any instance?—A. No. The Lehigh Coal and Navigation Company owns the Panther Creek road and delivers to both of these roads.

Q. Where does the Panther Creek road connect with the New Jersey Central?—A. At Hauto.

Q. Where does it connect with the Philadelphia and Reading?—A. At Tamaqua.

Q. Does the Panther Creek road serve all the collieries of your company?—A. All that are operated by the company; yes.

Q. How do you distribute your trade between the two roads, the New Jersey Central and the Philadelphia and Reading?—A. We distribute it in accordance with our ability to sell the coal in these different markets.

Q. Do you sell coal in New York?—A. Yes, sir.

Q. How do you distribute that tonnage between these two roads?—A. That all goes by the New Jersey Central.

Q. Why?—A. The shortest and most direct route. It is bound to that road by agreement of lease with the Lehigh and Susquehanna, which also belongs to The Lehigh Coal and Navigation Company.

Q. You are bound up to the New Jersey Central during that lease?—A. Yes, sir.

Q. What is the nature of the lease?—A. You asked me to bring the lease. Here is a copy of it.

(Witness produced copy of agreement between The Lehigh Coal and Navigation Company and The Central Railroad Company of New Jersey, dated June 28, 1887.)

Q. Give us your understanding of this.—A. The coal destined for markets on that road is bound for shipment on that line.

Judge Moor. I object to the contents of this lease from any gentleman, even a lawyer, on the ground that the lease is the best evidence, if it is at all important to have its contents in the record.

By Mr. McReynolds:

Q. The Lehigh Coal and Navigation Company owns the Lehigh and Susquehanna Railroad Company, does it?—A. Yes, sir.

Q. Some years ago that road was leased to the New Jersey Central Railroad Company, was it not?—A. Yes, sir.

Q. What is The Lehigh Coal and Navigation Company to get in consideration of that lease?

(Objected to by Judge Moot, as the lease is the only competent evidence.)

By Mr. McReynolds:

Q. What does The Lehigh Coal and Navigation Company get as the lessor in this lease to the New Jersey Central?—A. It gets a cash rental named in the lease.

Q. Are the rates of freight from your collieries over the Philadelphia and Reading Railway Company and the New Jersey Central Railroad Company to tide water at New York Harbor the same?—A. We have no rates by the Reading to tide water at New York Harbor.

Q. They do not quote you rates at all?—A. No, sir; we do not go that way. It would be a roundabout way.

Q. There is nothing to hinder you going that way if you wanted to, is there?—A. No, except the fact that there is no reason why we should.

Q. If they should give you a less rate than the New Jersey Central you would go there very quick, would you not?—A. I think we would; yes, sir.

Q. It is entirely possible to send all the freight from your collieries to the New York Harbor over the Philadelphia and Reading Railroad, is it not?—A. Yes, sir; there is no physical reason why it should not be done.

Q. You would do it if you got a rate that was inducive to that end?—A. I think so, if there was nothing in the lease to prevent it.

Q. What proportion of the output of The Lehigh Coal and Navigation Company is sent to tidewater at New York?—A. I can not answer that. This is a round figure, I do not recall it, but I should say a little more than half of it.

Q. How is it sold in New York?—A. Sold by our own agency.

Q. Do you sell any of the coals mined by your company to The Lehigh and Wilkes-Barre Coal Company?—A. No, sir.

Q. Do you sell any of the coals mined by your company to any other mining company?—A. No, sir. They are all handled by ourselves.

Q. They are all sold through your own selling agency?—A. Yes, sir.

Q. Give me approximately what you estimate as the cost of selling coal in New York.—A. That is a very difficult question to answer, because the question of bad debts and all that enter into it, and it is very difficult to get at that.

Q. I am only asking you approximately. Is it as much as 25 cents a ton?—A. In some instances; yes. I should say it ran around 20 cents a ton, in that neighborhood. It is so entirely contingent upon other matters that you can not give a figure for it.

Q. What do you estimate as the waste on a ton of coal weighed at your colliery, carried and sold in New York?—A. It would vary very much with the size of the coal. There would be entirely different wastage on broken coal, for example, than there would be on rice coal.

Q. Give me prepared sizes. About what would you say was the average waste?—A. I would not like to tell you offhand. I can give you figures for that that I think would cover it.

Q. Is it as much as 1 per cent?—A. Yes, sir.

Q. On all sizes it is as much as 1 per cent?—A. No; on prepared sizes you asked me.

Q. How about the smaller sizes?—A. On rice and buckwheat there is very little wastage, except for leakage. There is more or less leakage.

Q. That is included in wastage. Would it altogether be as much as half of 1 per cent on the small sizes?—A. I should think it would be all of that; yes.

Q. Is any railroad company, so far as you are aware, a stockholder in The Lehigh Coal and Navigation Company?—A. Not as far as I am aware.

Q. Is any other coal mining company the owner of stock in that company?—A. Not as far as I know.

Q. Have you any reason to believe that——A. I have no reason to believe that there is. On the contrary, I believe there is no such ownership.

Q. You think your company is owned by individuals?—A. I do.

Q. Are the presidents of any of the anthracite coal-carrying railroad companies stockholders in your coal company?—A. I could not tell you without looking at the list.

Q. You are not aware of it if they are?—A. No; I am not aware of it.

Q. You stated about half of your output came to New York Harbor?—A. I think a little more than half; yes, sir.

Q. Speaking generally, where does the rest of your output go?—A. It is shipped to various points along the lines between the mines and tide, and some of it goes to New England by rail, and some goes over the Lehigh and Hudson, and some of it goes to Philadelphia, and some of it goes to points on the canal. We own a canal in connection with this property.

Q. Is Philadelphia or New York nearer to your coal mines?—A. Philadelphia.

Q. Is the rate of freight to Philadelphia less than to New York or higher?—A. I could not tell you. It is about the same. I can not give you the exact figure. It is about the same.

Q. What is the difference in the distance? Do you know?—A. No; I don't know offhand. I imagine 30 miles possibly. It is easy to find that out.

Q. How far is it to New York?—A. I do not recall the distance. If I knew the distance to New York I could tell you.

Q. It is 150 miles, is it not?—A. It is about 150 miles.

Q. From Philadelphia it is about 120 miles, you think?—A. We go to Phillipsburg and down the river.

Q. And back again and go around?—A. Yes, sir. I should say about 100 miles, but I can not give it to you offhand.

Q. Is your company the owner of the shares of any of these anthracite coal-carrying roads?—A. No, sir.

Q. Is the same true in reference to the coal companies which themselves are controlled by the railroad?—A. I think we have a small stock interest in The Lehigh and Wilkes-Barre Coal Company. Not very much of it.

Q. Have you any business with The Lehigh and Wilkes-Barre Coal Company?—A. No.

Q. You neither buy from them nor sell to them?—A. No, sir; neither.

Q. How much coal lands are owned by The Lehigh Coal and Navigation Company?—A. A little over 13,000 acres.

Q. Have you brought a statement showing that?—A. Yes, sir; I have a statement of it.

(The witness produces the statement and the same is offered in evidence as Government Exhibit No. 1.)

Q. Does you company issue each month a statement of its prices for coal at the New York Harbor?—A. Yes, sir. Do you mean a published statement?

Q. Yes.—A. No.

Q. Does it make a statement to the dealers?—A. No. It reports to Mr. Ruley the tide prices.

Q. You report to Mr. Ruley each month your tide prices?—A. I think we do.

Q. Who is Mr. Ruley?—A. Mr. Ruley is statistician.

Q. At the head of the bureau of anthracite coal statistics?—A. Yes, sir.

Q. Why do you report to him?—A. For general information.

Q. Whose general information?—A. Our own and other people interested in the trade.

Q. You do not advise yourself by reporting to Mr. Ruley, do you?—A. Those figures are available for everybody as to the tonnage at tide prices.

Q. You report to Mr. Ruley each month everything that you sell here at New York Harbor?—A. No. That is not what we report. We report the average prices of each size and the tonnage.

Q. What does Mr. Ruley report to you?—A. He gives us the general average of the whole business.

Q. You say a general average of the whole business?—A. I mean of the tide-water business, the tide-water prices of such people as report to him.

Q. Who does report to him?—A. I can not tell you that. I do not know entirely.

Q. He reports to you in detail, does he, what your competitors are doing?—A. Yes, sir. How do you mean?

Q. I mean what your competitors are doing in the way of sales at tidewater.—A. Yes, sir. What those sales are.

Judge Moor. I object to eliciting from this witness orally in answer to questions improper in form the contents of the reports of Mr. Ruley and the contents of information sent to Mr. Ruley by the witness or his corporation, and insist that the only competent evidence on these subjects is the information sent to Mr. Ruley and the reports made by Mr. Ruley, as the questions of the counsel are in such form that they make absolutely misleading to any court anything on the subject in this record.

By Mr. McReynolds:

Q. If I understand, your company reports to Mr. Ruley, the head of the bureau of anthracite coal statistics, each month the average price of all the coal which it has sold at New York Harbor?—A. That is right, as I understand it; yes.

Q. And the amount which it has sold?—A. Yes.

Q. Is that all you send to Mr. Ruley?—A. That is all we send him.

Q. That is all the information you give him at any time?—A. Yes, sir.

Q. What does Mr. Ruley send to you?

(Judge Moot desires to note the same objection to this question. Mr. Warren also entered the same objection to this question.)

A. He sends to us a statement showing the average price received by all of the shippers to tide, upon which our wages are based for the month.

Q. You mean by all the shippers to tide the people who ship and sell coal in the New York Harbor?—A. New York waters, yes; not necessarily New York Harbor.

Q. So you get at the end of each month a statement from Mr. Ruley which shows you just how much coal has been sold and the average price received by your competitors at New York Harbor?—A. Not all of our competitors singly. We receive an average in which their coal and that of all our competitors are put together for each region, the Lehigh coal and the Wyoming coal. We do not get from that report what each competitor gets.

Q. But you get the average of all the people in a particular region?—A. Yes.

Q. Are all the statistics in Mr. Ruley's keeping open to you if you want them?—A. I do not know. I never had occasion to inquire, and I do not know.

Q. Does he also show in this monthly report which he makes to you the amount of coal from each particular region which has been sold?—A. He shows from each region; yes.

Q. You mean by each region, the northern region, the middle, and the southern?—A. Yes, sir; the Lehigh and Schuylkill.

Q. Are you not also advised, from time to time, concerning the total amount of coal which is taken up by the initial railroads?—A. No.

Q. How do you ascertain the total coal produced in the whole anthracite region?—A. We do not ascertain that.

Q. You do not know it?—A. We get it; yes. It is in the public prints. I do not recall that we have any statements from Mr. Ruley.

Q. Does not Mr. Ruley send you that thing every month?—A. He may. If he does, I put it away in my desk and do not look at it. He may. I do not recall that. I can find it if I have it.

Q. Of what particular value is it to you to know the average price at which all the coal in the southern coal field is sold at tide water?—A. Our wages are based on a scale of sliding prices.

Q. Do you mean they are based upon the scale of sliding prices of the average of coal from the region, or a sliding scale based upon your own prices?—A. They are based on the sliding scale of the region prices. They advance a given amount every month.

Q. I do not understand that.—A. I do not know how I can make it any clearer to you.

Q. What I want to know is whether you pay your operators according to the price you get or according to the average price of the region.—A. My recollection is that the wages are advanced every month a certain fixed amount. I do not recall really what that is.

Judge CAMPBELL. I object to this form of introducing this evidence. The recommendation of the strike commission fixes it exactly.

Mr. MCREYNOLDS. I am not asking about the strike commission. I am asking this witness about his own affairs.

The WITNESS. I can not answer you offhand what is in the writing. I can examine that for you and give it to you later, but I can not recollect it. I do not want to be put on record as giving exact figures.

Q. How are your prices at which you sell coal at New York Harbor fixed?—A. We fix them ourselves.

Q. How? What do you take into consideration?—A. We get the very best price we think we can for the coal, just as any other merchant would do.

Q. Do you have information about what other coal companies are going to sell at next month, for instance?—A. No; we do not. We would like to have it.

Q. You do not know?—A. We do not know; no. No one knows exactly. There is not any such close union that we can tell what our competitors are going to sell their coal for. I wish there were. I would know better how to handle our own business.

Q. Do you sell at the same price or a different price?—A. We sell at the very best price we can get, always.

Q. So do all your competitors, of course?—A. I presume so; yes.

Q. Can you get a better price for your coal than your competitors?—A. We can for some grades of it, and for some grades we can not get as good.

Q. Then of what advantage is it to you to know the average price at which coal is being sold from your region?—A. A matter of general information. How would you know anything about it? Any merchant would know that, if he understood his business.

Q. What are your prices to-day for the prepared sizes; egg, say?—A. I will give you the averages for last month if you will give me a little time. I can not give them offhand.

Q. Were they not exactly the same as The Philadelphia and Reading Coal and Iron Company prices?—A. I do not know.

Q. Are you not always advised what The Philadelphia and Reading Coal and Iron Company is going to sell theirs at?—A. Their average prices; no.

Q. No; not the average prices. What their public prices are.—A. No; I am not.

Q. You fix your prices irrespective of them?—A. We have a general idea, of course. These prices that we learn of every month, we deal with the same people they deal with. We know the prices at which they offer coal, and we do our best to hold our business on that basis.

Q. Are you not selling coal at exactly the same prices they are to-day?—A. No, sir; I tell you we are not. As far as I know, we are selling our coal at the best prices we can get for it and keep our mines running. That is what we are in business for.

Q. You have no standard for your coal?—A. No standard beyond that.

Q. Have you no fixed price for your coal?—A. Yes, sir; we issue a circular.

Q. When do you issue that circular?—A. I do not recollect whether we issue that every month. Yes; I think we issue it every month.

Q. Are not the terms of that circular just exactly the same as the circular issued by The Philadelphia and Reading Coal and Iron Company?—A. I can not answer that. I do not know.

Q. Do you not see that circular?—A. I have not seen a Philadelphia and Reading circular in six months.

Judge CAMPBELL. I object to this form of proof, and give notice of a motion to strike it out unless these circulars are produced, which will speak for themselves.

By Mr. McREYNOLDS:

Q. Has not the price of your coal changed in six months, except from month to month so much, 10 cents each month?—A. It changes constantly.

Q. What do you mean by that?—A. I mean we have no fixed price in a market of this sort. We are occasionally obliged to cut our prices to move our coal. We make a fixed price, but make a discount from that price.

Q. Do you mean to say, then, that you publish one price and sell at another?—A. We publish a circular price, as most other people do, from which a discount is allowed, as most people do.

Q. Is that discount uniform?—A. No, sir.

Q. You give a different discount to different customers?—A. We might do that; yes.

Q. Do you do that?—A. Yes, sir; we do.

Q. How much is your maximum discount?—A. I can not tell that. It is in the hands of our sales department, and I can not give you those details.

Q. One per cent?—A. I tell you I can not give it to you. If I knew it was 1 per cent I would have told you.

Q. Is it that much or less than that?—A. It depends on circumstances.

Q. You have given him orders as to about how much discount he shall give?—A. We tell him to get the best price he can. Sometimes he gets more than the circular price. At other times he gets less, depending on circumstances, depending on how good his credit is, or a dozen other things enter into the merchandise end of it.

Q. Do you change your prices of coal each month after April?—A. We change the circular price.

Q. What was your circular price for egg coal last April?—A. I can not recollect those figures. I can give you the circular.

Q. Have you not had the same circular prices for your coal for the last three years?—A. That I can not answer, but I will produce the circular.

(Mr. McReynolds requested the witness to produce the circulars referred to issued by his company for the last three years.)

Q. Who is your principal competitor in the New York market?—A. I do not know that there is any principal competitor. We are competitors of every other of the large interests who ship coal here.

Q. Give us some of them.—A. The Lehigh and Wilkes-Barre Coal Company, The Philadelphia and Reading Coal and Iron Company, the Delaware, Lackawanna and Western Railroad Company, the Lehigh Valley Railroad Company, the Ontario and Western Railroad Company, and the Erie. Those are among the principal ones.

Q. Do you confer with those people about the prices of coal?—A. Not at all.

Q. When did you cease to?—A. I have not done it since I have been with the company.

Q. Have the prices of coal been changing in your company since you went there?—A. Yes, sir.

Q. Materially?—A. Yes, sir.

Q. Raised or lowered?—A. Both.

Q. The different sizes?—A. At different times different sizes, depending on the market.

Q. You always change your price of coal on the 1st of April, do you not?—A. We do; yes. It is good business to try to get these people to take their coal early in the season so that we are not crowded and rushed with coal in the fall.

Q. Each month you advance it 10 cents?—A. We advance our circular 10 cents, yes. We do not necessarily advance the price.

Q. Mr. Ruley's figures will show your average prices, will they not?—A. I think so. If not, I will be glad to give them to you.

Q. How long has your company been reporting to him?—A. I can only answer for the last year and a half, since I have been there.

Q. Did you bring the data showing the amount and general location of your acquisitions of coal lands, the number of acres?—A. Yes, sir; it is in the statement I gave you before.

Q. You have produced a copy of the agreement between The Lehigh Coal and Navigation Company and The Central Railroad Company of New Jersey, with modifications, which I now ask you to make part of your testimony as Government Exhibit No. 2.

(Judge Campbell objected to the agreement produced by the witness being introduced in evidence.)

Mr. WARREN. I reserve the right to enter objections to the lease when we have had an opportunity to inspect it.

(Mr. Warren requested counsel for the Government to state the purpose of the offer of this document in evidence.)

Mr. MCREYNOLDS. To prove what is in it.

Mr. WARREN. We move to strike out this or any other evidence which the counsel for the Government may introduce, if they decline to state the purpose or relevancy of it at the time of its introduction.

Mr. MCREYNOLDS. The agreement between The Lehigh Coal and Navigation Company and The Central Railroad Company of New Jersey, dated June 28, 1887, and the previous agreements to which it refers, one between the same parties and dated March 31, 1871, and the other between The Lehigh Coal and Navigation Company, The Central Railroad Company of New Jersey, and The Philadelphia and Reading Railroad Company, are offered in evidence as Government Exhibit No. 2.

(Counsel for the Government reserve the right to recall Mr. Lathrop, if found necessary.

Counsel for the defendants reserve the right to cross-examine Mr. Lathrop at some future time.)

(Adjourned until Thursday, October 8, 1908, at 10.30 o'clock a. m.)

Met pursuant to adjournment at room 47, Post-Office Building, New York City, Thursday, October 8, 1908, at 10.30 a. m.

Present: The Examiner; James C. McReynolds, esq., and G. Carroll Todd, esq., for the United States; and J. D. Campbell, esq., Adelbert Moot, esq., Everett Warren, esq., William S. Opdyke, esq., and James H. Torrey, esq., for various defendants.

WILLIAM W. RULEY, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Give your age, residence, and business.—A. Age, 37; residence, Bala, near Philadelphia; occupation, chief of the bureau of anthracite statistics.

Q. How long have you been connected with the bureau of anthracite coal statistics?——A. My recollection is it was in the early part of 1890.

Q. What is the bureau of anthracite coal statistics?—A. I do not know, unless it might be called a general information bureau in regard to coal matters. We do not confine ourselves absolutely to anthracite. We compile bituminous statistics to a more or less extent.

Q. Is it an incorporated concern?—A. No, sir.

Q. Is it a partnership?—A. No, sir.

Q. Or is it an individual venture?—A. It is really merely a name, as far as a bureau is concerned.

Q. Whose enterprise is it?—A. It was started long before I became connected with it. At that time, in 1890, it was under the direction of Mr. John H. Jones, who had had it for a number of years previous to that time. In fact, I think, if I am not mistaken, he developed it, built up the business of collecting statistics.

Q. Under whose control is it now?—A. I look after it. I do not know that it can be said to be under anybody's control.

Q. Is it your individual business?—A. Yes, sir.

Q. So the bureau of anthracite coal statistics is simply a name under which Mr. Jones originally did business, and succeeding him you took charge?—A. That is the idea.

Q. And now you are really the bureau?—A. That is what you might term it.

Q. Give us in a general way what the business of your bureau is. Describe with some detail what it is.—A. We collect statistics from the anthracite roads, from which we compile a monthly report showing the general tonnages of anthracite; that is, coal actually shipped from the mines. In addition to that we compile the general average f. o. b. prices of anthracite coal, New York Harbor.

Q. What else?—A. We keep a general sort of a record of the anthracite business, and in addition, as I say, in a general way the bituminous statistics of the country. I issue or publish a little book for publication showing the production of bituminous coal in the various States, and the facts in regard to its distribution. Then I get up the matter in the anthracite map. We issue that. You have

some doubtless here in your records, which will be furnished you. It is rather difficult to describe in detail. We just attempt to keep a general record of the statistics of coal production and distribution and then the specific matters I have mentioned here.

Q. Including, I presume, the prices?—A. Yes; that is, the f. o. b. prices New York Harbor. We do not pay any attention to any other prices. I might say that the bureau in 1890 was under Mr. Jones's direction, and was authorized by the United States Census Office to take the census of coal, both anthracite and bituminous, in the United States, and just about that time I became connected with it, and served as his secretary in that connection. In the United States census of 1901 I was authorized by the Census Department to collect the figures and make report on anthracite, and for all the years I have been connected with the bureau I have made the only regular report of anthracite coal to the United States Geological Survey, under Doctor Day and Mr. Parker's directions.

Q. These reports which you have made have been published by the Geological Survey of the Department of the Interior under the items of the production of anthracite coal, for several years?—A. Yes.

Q. The statements you have made in these reports you regard as correct and as near accurate as you could get them?—A. Yes, sir.

Q. Have you any partners in this business, or is it your own individual enterprise?—A. I have, in some of the publications which we issue; I have a partner, Mr. J. W. Alder, but that is simply in some special matter.

Q. Did you come into possession of the statistics of the bureau which had been compiled under the direction of Mr. Jones when you took possesison in 1890?—A. Yes.

Q. They are still preserved with you?—A. Yes.

Q. What reports do you receive monthly, or from time to time, from coal-producing companies?—A. We receive monthly reports showing shipments over the several anthracite roads.

Q. From whom do you receive those monthly reports, from the railroads or from the coal-producing companies?—A. From the railroads.

Q. Which railroads send you in these monthly reports? Name them.—A. Philadelphia and Reading, Lehigh Valley, Central Railroad of New Jersey, Delaware, Lackawanna and Western, Pennsylvania, Delaware and Hudson, Erie Railroad, and New York, Ontario and Western Railroad.

Q. Does the New York, Susquehanna and Western also send in reports?—A. I do not know the New York, Susquehanna and Western as a separate company. That is embraced in the Erie report.

Q. Put in the records exactly what these several railroads report to you.—A. They report the coal from the several collieries on their lines—the coal actually originating on their lines and shipped to market by them.

Q. Do you mean that each of these roads reports to you in detail the number of tons of coal which are delivered to it at each colliery

along its line?—A. Some of them give that detailed report. All of them do not give it in quite that much detail.

Q. Which ones of them give it in that detail?—A. The Philadelphia and Reading, the Lehigh Valley, Central of New Jersey, and Lackawanna, Ontario and Western.

Q. What do the Erie, Pennsylvania, and Delaware and Hudson Company report?—A. The Pennsylvania reports its shipments by what are known as the three regions—Wyoming, Lehigh, and Schuylkill regions. The Delaware and Hudson being in one region they simply report their tonnage in a lump sum. The Erie also reports their tonnage in a lump sum.

Q. Does the Erie get into more than one region?—A. No, sir; most of the other companies operate in the three regions, or at least two regions.

Q. Does the Pennsylvania Company go into all three regions?—A. Yes, sir.

Q. When are these statistics furnished you by these several railroad companies?—A. They vary from the 1st of the month following the month of shipment up to the 6th. We ordinarily issue a report on the 6th of the month.

Q. Between the 1st and the 6th of each month the statistics which you have described are put into your hands by these several railroads?—A. Yes.

Q. The result of that is that you know exactly how much anthracite coal has been shipped over all the lines of railroad going into the anthracite regions for the month before?—A. Yes.

Q. What do you do with those statistics?—A. I furnish them to the officers of the railroad companies and furnish them to the press. They are usually published every month.

Q. What do you mean by furnishing the statistics?—A. Copies.

Q. Of the actual reports sent in to you?—A. No; just the compiled report.

Q. You take the statistics sent in to you, and what do you do with them?—A. We simply show the shipments—the gross shipments over each road— as compared with the same month the year before, for each company, and then also a total of the calendar year and the other.

Q. Having compiled these statistics in the way you have described, what do you do with them? You said awhile ago, I understood, that you furnished them to the presidents or officers of each road?—A. Of course, it varies. Some companies we furnish quite a number of copies, others merely to the president's office or to some other officer—some one directly identified with the coal end of the business.

Q. But to some officer or officers of the company, according to your instructions, of each one of these railroads, you furnish these compiled statistics as early in the month as you can get them out?—A. I do not like to answer that "according to instructions." We furnish them to anyone. Anyone in the road can receive them; they can get

them by writing us for them. It is simply at their request, just as I would furnish the figures and prices on their request.

Q. You say they are furnished to the press?—A. Yes; they are in the trade papers each month.

Q. How long have you been making up the character of statistics for the railroad companies which you have just described?—A. I became connected with the bureau in 1890, and I have been really doing that work ever since.

Q. And your bureau has been receiving this kind of monthly reports from these roads, and you have been sending out this character of reports since 1890?—A. Yes.

Q. Have you got one of those reports with you?—A. That is one you have there. There is one for September.

Mr. McREYNOLDS. I offer this report in evidence as Government Exhibit No. 6.

Q. Is this Government Exhibit No. 6, which you have produced, in the same form which you have used in sending out these reports since 1890?—A. No, sir.

Q. How long has this particular form been in use?—A. I can not answer that right offhand.

Q. Give us approximately, if you can.—A. I think it has been in use for ten years.

Q. Previous to 1898, then, there was another form giving the same general information, was there?—A. Yes, sir; the other form differed from this in that it simply gave total tonnage of coal, while you will observe that this divides the tonnage into large and small sizes.

Q. With that exception, were the reports the same?—A. Yes, sir.

Q. In the last column of this report, under the head "per cents," certain figures are given. What do those per cents represent?—A. They indicate the percentage of the total tonnage which each company shipped.

By JUDGE CAMPBELL:

Q. Carried?—A. Yes.

By Mr. McREYNOLDS:

Q. I presume your bureau has certain clients. For whom do you make up statistics and how are you compensated for making up these statistics? Are you employed by certain interests to make these statistics regularly?—A. I get a commission—I suppose it would be called a commission—from the companies who report and to whom I furnish the reports as indicated on there, based on their tonnage; that is, the amount carried.

Q. In other words, each of the railroads whose names are set out here in this Government Exhibit No. 6 before you pay you a certain commission, based upon the total amount of anthracite carried over their lines?—A. Yes, sir.

Q. Is the detailed information which is sent in to you available to any one of these railroads?—A. I do not know; they never asked for it. I would consider that information was simply given me for

the purpose of checking up tonnages and showing that they were correct, and not to give the individual business of one company to another, the details of their individual business.

Q. There is no report of this detail to the individual company?—A. No, sir.

Q. Only the sum of it all is sent out by you?—A. That is all; that question has never arisen.

Q. And you do not know what would be the result?—A. No.

Q. At one time did you not send out, in connection with that report to the several railroad companies of the total amount of shipments over each line, a calculation showing its relationship to what were called "presidents' percentages?"—A. Yes, sir.

Q. When did you cease to send out that information?—A. By looking at my files I can give you the exact date.

Q. Suppose you give me the best of your recollection and then you can supply the actual date when you look at your files?—A. It must have been four years ago, I should think; three or four years ago, I am not certain.

Q. But you say it must have been three or four years ago?—A. I will put in the actual dates when I consult my files. You can tell from the statements themselves.

Q. When did you first begin to send out, in connection with these monthly reports to the railroad companies, the relationship of the total shipments to what were called the "presidents' percentages?"—A. It was somewhere between 1895 and 1900.

Q. The exact date you can supply, can you?—A. Yes, sir; I will supply the exact date.

Q. Have you got one of these reports showing presidents' percentages with you?—A. No, sir; I have not.

Q. Can you supply a copy of one?—A. Yes, sir.

Q. I will ask you to do that and make it a part of your deposition as Government Exhibit No. 7. In the form which we have, Government Exhibit No. 6, under the last column entitled "per cent" you give the percentage of the total shipment for each line to the shipments for all lines. Under the form showing the presidents' percentages where were those percentages entered?—A. The presidents' percentages?

Q. Yes.—A. I do not quite get what you mean. They were simply given in a separate column in the report.

Q. In the former report there was a column in addition to the columns on Government Exhibit No. 6?—A. Yes.

Q. The information in Government Exhibit No. 6 was in those?—A. Yes.

Q. And in addition to that was what was referred to as presidents' percentages?—A. Yes.

Q. In a separate column?—A. Yes.

Q. Headed what?—A. I think that is what it was headed.

Q. It was headed presidents' percentages?—A. Yes.

Q. Under that column what did you show?—A. We showed the percentages, I do not recall the exact amount, which I supposed, which I understood to indicate the mine capacity of the various collieries located on the roads indicated. Of course the actual figures I can give you from the statements themselves.

Q. We will ask you to produce one of those.—A. I do not recall just what they were at the present time.

Q. Where did you get your information in reference to presidents' percentages?—A. I really do not know. That may seem strange, but it is a fact.

Q. What did you understand was the meaning of presidents' percentages?—A. I think it was in 1896 a statement was published, in the early part of 1896, which was called the "presidents' percentages," and which I understood and I believe was generally understood, indicated, as I say, the mine capacity of the road; that is, the capacity, the combined shipping capacity, of the mines on any given road. I incorporated those percentages of my own initiative, simply to indicate what was supposed to be the mine capacity and what was really and actually shipped over those roads.

Q. Didn't you have information at that time that the presidents of these roads, or parties representing these various anthracite interests, had gotten together and determined among themselves what was a fair and just distribution of the amount of coal to be produced?—A. No, sir; I did not.

Q. You do not know where you got these percentages that you entered on these reports?—A. No, sir; I do not. They were published very generally. They were in all the trade papers, and were being generally discussed at that time, as to the mine capacity of these companies. It was a matter of common comment at the time.

Q. You also showed how much the production of each road exceeded or failed to come up to these percentages, did you not?—A. Yes, sir.

Q. Why did you quit that method of reporting?—A. It seemed to me that those percentages as they were given there created a misapprehension—that is, that it seemed to be thought in some quarters that they indicated a quota which was being worked upon; that is, a quota for each company, and I felt if that were the case that they were creating a wrong impression and it would be best not to put them on the reports.

Q. I ask you to produce, as soon as you can get them, samples of those reports which you made out between 1895 and three or four years ago, and prepare yourself to tell us when you commenced to make that sort of report and when you quit.—A. Yes, sir; I will do so.

Q. If I understand you, for the reports in the general form of Government Exhibit No. 6 you were paid a commission by the railroad companies whose names appear upon that?—A. Yes.

Q. When did you cease to put on these reports the name of the New York, Susquehanna and Western Railroad?—A. When it was absorbed by the Erie Company.

Q. Do you remember about when that was?—A. I do not.

Q. Please ascertain that and let us know. You formerly reported the Delaware, Susquehanna and Schuylkill Road, did you not?—A. Yes, sir.

Q. When did you cease to report to that road?—A. When that company was taken over by the Lehigh Valley. My recollection is that it was continued as a separate company to the end of the calendar year, in order to be able to show comparison.

Q. Is the information contained in Government Exhibit No. 6 all the information that you furnished to the several railroad lines mentioned?—A. No, sir; we furnished the reports on prices, f. o. b. prices.

Q. Are those reports of f. o. b. prices made to the railroad company or to the producing coal companies?—A. To the producing coal companies.

Q. Is the information which you gave in this Government Exhibit No. 6 the only information which you sent directly to the railroad companies?—A. That is the only regular information. We sometimes compile a special report on something that one company or another is interested in. That is, we compile a yearly report of the general distribution of anthracite, showing the geographical distribution of it, which we also furnish to the companies.

Q. How do you get the information upon which you make that report concerning the geographical distribution of anthracite?—A. We get that from the coal companies.

Q. From the coal companies?—A. Yes.

Q. And not from the railroad companies?—A. No, sir.

Q. That information you sometimes furnish to the railroad companies?—A. We furnish it to anybody. It is a matter of public record.

Q. Except that then this Government Exhibit No. 6 represents the information that you give directly to the railroad companies?—A. Yes.

Q. Coming now to what you call the coal companies, what information do the coal companies furnish your bureau?—A. You mean the producing companies?

Q. Yes, sir.—A. From some of them we get the f. o. b. prices New York Harbor, upon which we base the general average f. o. b. price as given in the statements which we furnish. Then regularly each year I get from each coal-producing company a statement of its mine operations for the year, the amount of coal produced, the amount of coal used at the mines, shipped, number of employees, the price they secured for it, the average price secured at the mine, the division of the sizes, showing the various sizes of anthracite produced by each company, data as to strikes, and on the basis of these figures I prepared the report for the United States survey.

Q. Do I understand that every company and every line operated in the anthracite region reports to you once a year its total output for that year, together with the other information?—A. Yes.

Q. That comes from every company in the region?—A. Yes.

Q. Independent operators?—A. Everybody.

Q. Everybody?—A. There may be one or two little concerns.

Q. About how many of these people are there?—A. All told we get reports from very near 400 collieries and operations. That includes washeries, of course.

Q. Each one reports this information which you have detailed concerning itself?—A. Yes.

Q. And upon that you make up a statement showing the total production in the anthracite region?—A. Yes.

Q. And compiled the other information which you publish in connection with the Geological Bureau at Washington?—A. Yes; those figures are all furnished on regular government blanks—schedules.

Q. In addition to that some companies furnish you with a statement of the amount of coal shipped by them to the New York Harbor?—A. Yes, sir.

Q. And the average prices received by them for that coal?—A. Yes.

Q. What companies make that report to you?—A. The Philadelphia and Reading Coal and Iron Company; Lehigh Valley Coal Company; Lehigh and Wilkes Barre Coal Company; Delaware, Lackawanna and Western—the coal department.

Q. You mean the Delaware, Lackawanna and Western Railroad coal department?—A. Yes; the Hillside Coal and Iron Company, embracing the New York, Susquehanna and Western coal. The coal department of the New York, Ontario and Western; the Pennsylvania Coal Company, in connection with the Hillside Coal and Iron Company; The Lehigh Coal and Navigation Company.

Q. That makes seven companies which report directly to you the amount of coal which they send to New York Harbor and the prices which they get for it f. o. b. at that point?—A. Yes.

Q. What about Coxe Brothers; do they report?—A. Coxe Brothers is now reported by the Lehigh Valley. They did formerly report separately.

Q. What is the detail which these companies report to you?—A. Each of the companies shows the total tonnage of all shipments of each size and the gross amount of money received for that size, which enables us, by adding the tonnages and the money, to strike a general average.

Q. Are those reports made to you each month?—A. Yes.

Q. For the month of September it would be made to you between the 1st and 6th of October?—A. Along about that time. We usually issue our reports about the 8th.

Q. And so on for each month of the year?—A. Yes.

Q. Are these reports made to you so as to show the sales of the coal from the several coal regions?—A. Yes, sir.

Q. So that you are able to tell the average price received by each one of these companies for each region?—A. Yes, sir.

Q. Are those reports made in reference to all coal?—A. Yes.

Q. All sizes?—A. Yes.

Q. How many sizes of coal are there?—A. Broken, egg, stove, chestnut, and pea.

Q. The chestnut and above are what you call prepared sizes?—A. Yes.

Q. And below chestnut there are what sizes?—A. Pea coal and three sizes of buckwheat. Some companies only sell two sizes of buckwheat. It is called by some buckwheat 1, 2, and 3, and others call it buckwheat and rice coal.

Q. Where does barley come in?—A. Buckwheat, rice, and barley would be the corresponding terms for buckwheat No. 1, No. 2, and No. 3. Some companies do not sell anything smaller than rice, which we call buckwheat No. 2.

Q. Broken is sometimes called "grate" in the literature on the subject?—A. Yes; I may add to complete that, that sometimes there is a small amount of lump.

Q. After you get in this detailed information from these companies which you have named, what do you do with it?—A. I send it out.

Q. Do you send it as you receive it, or do you compile it?—A. I compile it. We compile it so as to show the general average for the three regions—coal from the three regions—Wyoming, Lehigh, and Schuylkill; and then we make up a statement showing the average price for each size from each region.

Q. What do you do with those statements?—A. We send those to the coal companies.

Q. What companies?—A. Practically to any coal companies that ask for them.

Q. You have regular clients to whom to report them?—A. Yes; we have a mailing list. Generally speaking, they are The Philadelphia and Reading Coal and Iron Company; that company would inform me of any contracts which they had with individual operators on which they had to make settlements, and I would send these reports to these individual coal companies without any request on their part, so that they would have the same information as The Philadelphia and Reading Coal and Iron Company.

Q. And the same in reference to each of these other companies that make reports to you, I presume?—A. Yes.

Q. I show you here what purport to be three reports which we will call Government Exhibit No. 8, Government Exhibit No. 9, and Government Exhibit No. 10 to your deposition, showing the average price for the Wyoming, Lehigh, and Schuylkill regions for the month of August, 1908. Examine them and see if that is the sort of reports you have been referring to and which you sent out?—A. Yes, sir.

(The three reports are offered in evidence marked, respectively, Government Exhibits Nos. 8, 9, and 10.)

Q. How long have you been compiling the statistics and sending out, as the result of that compilation, the character of reports as shown by Government Exhibits Nos. 8, 9, and 10?—A. Since 1901. I can give you the exact date here. I have them all. The first report I have here is November, 1900. I started in the early part of 1901. This was sent out in the early part of 1901.

Q. You have all the reports you have made on this subject since 1901 here with you?—A. Yes, sir.

Q. I will ask you to produce them for our inspection.—A. They run from November, 1900, to August, 1908. The September ones have not been compiled yet. They will be out to-day.

Q. If I understand rightly, the same form of report has been used since you began to send them out from November, 1900?—A. Yes.

Q. Prior to that year, 1900, did you make out any reports showing similar information to that contained in the ones you have just produced?—A. No, sir.

Q. You had nothing to do with the percentages, average prices?—A. No, sir.

Q. Your bureau sent out no information with reference to average prices?—A. No, sir.

Q. Why did you begin in 1900 to send out these particular kind of reports?—A. As I recall it, in the early part of that year Mr. Cumming, who was then vice-president of the Erie road and also of their coal companies, told me that they were anxious to get away from the eternal bickering between the individual operators in the matter of settlement of their contracts. That is, the Hillside Coal and Iron Company would settle with these individual operators on the basis of their figures, combined perhaps with some other company, and another company right alongside of them would settle on the basis of their price combined with those of some other company, and there would always be a difference from month to month in the returns to the individuals, and they wanted to try to get an average price which was a real average and which would be satisfactory to everybody in that given region, and he asked me if I would undertake to see the various companies and endeavor to secure from as many of them as I possibly could their average price and their tonnage, and compile a general average for each region, that they would prefer to settle on some such basis as that. On his suggestion I saw a number of companies. They agreed to do it, and gave me the information from month to month.

Q. Were you acquainted with the contracts which went into effect between these various coal-producing companies and individual operators in 1900?—A. Yes; I saw the copies—that is, I saw what was supposed to be a copy. Mr. Cumming, I think, handed me a proof of it, which indicated that there should be some method of providing for the averages, and suggested that I work along those lines.

Q. Was that a general form of contract which was entered into by most of the independent people and which went into effect in 1900?—A. I can not answer that.

Q. What was your information?—A. The only thing I saw is that form of contract which I got. I understood it was, or certain modifications of it; but I was only interested in the particular clause which referred to the compilation of prices.

Q. Were you acquainted with the percentage contracts which were in existence prior to 1900?—A. Generally; I knew some existed. I had nothing to do about them.

Q. You had nothing to do with the settlements made under them?—A. No.

Q. Were you not aware of the fact that there was this change in the form of the contract which went into effect in 1900?—A. No; I do not think I ever saw one of the contracts; in fact, I know I never saw one of the contracts prior to 1900.

Q. You said awhile ago that The Lehigh Coal and Navigation Company reported to you each month its sales at New York Harbor, did you not?—A. Yes.

Q. I believe you said they were not put into the general average?—A. No, sir.

Q. Why?—A. Because at the time I started to compile the prices they did not seem agreeable to making the reports. They subsequently did, and inasmuch as we started on one method I did not feel that it was the proper thing to change it.

Q. Are their averages substantially the same as the averages of the other companies that reported to you?—A. I do not suppose there is any very great difference in prices. I do not know why there should be, except I know there was a difference in the prices of their own coal.

Q. Their different collieries?—A. Yes; but I suppose on equal grades they got substantially the same as the other companies out in the open market.

Q. What other companies sell here at tide water, if you know, except the ones whose averages you utilized in making up the average prices for each region?—A. I could not tell you, not without investigation.

Q. Do you know of any?—A. I know that there are a number of companies that handle their own product here.

Q. Who do not report to you?—A. No.

Q. Please state which companies report to you from the northern or Wyoming region.—A. Lehigh Valley Coal Company; Lehigh and Wilkes-Barre Coal Company; Delaware, Lackawanna and Western, coal department; the Hillside Coal and Iron Company; Ontario and Western, coal department. When I speak of the Hillside Coal and Iron Company I mean to embrace the New York, Susquehanna and Western coal business, the Pennsylvania Coal Company, also the Delaware and Hudson coal business.

Q. Does the Hillside Coal Company report to you coal which it has bought from The Delaware and Hudson Company?—A. Yes. It does not make any distinction in the coal. I simply know they do

report that coal, that their figures are embracing the figures of the others as well as their own.

By Mr. TODD:

Q. We are not interested in getting the Delaware and Hudson coal unless it was sold by The Delaware and Hudson Company; we are simply getting each company which reported.—A. That embraces the three.

Q. The Hillside?—A. Yes.

By Mr. MCREYNOLDS:

Q. What companies report to you coal sold from the Lehigh region or central region?—A. The Lehigh Valley Coal Company, The Lehigh and Wilkes-Barre Coal Company; the coal of Coxe Brothers, which is really the Lehigh Valley now.

Q. Is that reported separately?—A. No; it is only in respect to the region.

Q. Are those the only companies that report from that region?—A. Yes; that is the smallest region we have.

Q. What companies report from the Schuylkill region?—A. The Philadelphia and Reading Coal and Iron Company and The Lehigh Valley Coal Company.

Q. Do any of the companies affiliated or connected with the Pennsylvania Railroad Company report to you with reference to average prices?—A. No, sir.

Q. Can you make up the figures showing the total coal sold f. o. b. New York Harbor?—A. We have an approximate statement of that which we get in preparing the distribution figures which I spoke of, but no accurate statement.

Q. What proportion of the coal that is sold on New York Harbor, according to your approximate estimate, is sold by the several companies which report their averages to you?—A. I could not answer that. It has been a year since I looked at the figures.

Q. Ninety-five per cent? Give us the best estimate you can make of it.

Mr. MOOT. I object on the ground that it is not a subject for expert evidence, but it is a subject if there be any, on which the Government must make accurate proof if it attaches any importance to the fact, and that accurate proof means an actual compilation of the statistics for the period of time as to which the Government is interrogating the witness.

Mr. WARREN. I object, because the witness having said he can not give it without reference to matters which he has not examined for a year, he is asked to guess, and the question is therefore incompetent.

Q. Give us the best estimate you can from your recollection of the figures.—A. I might just as well jump in the dark.

Q. Can you find those figures?—A. Yes; but at best they are only approximate; but I can by going back over my records find in an average year about the amount.

Q. Investigate your records for us and give us these figures for the last three years. What other statistics or information based upon statistics have you furnished these various coal producing companies?—A. I furnish all of the coal-producing companies copies of the annual report which I spoke of compiling, because each of them gives me the information which goes to make up that report. Then we furnish some figures on size division, which I also get from the reports of these individual companies, simply showing the proportion of sizes going from each region, the total sizes going from each region for the year. The object of these reports is, or at least they indicate the great increase in the relative proportion of small sizes as compared with the large.

Q. And that is all the information that you compile and send out to them?—A. Yes, sir.

Q. You have prepared for us a statement of the shipments of anthracite coal by initial transportation lines, commencing with January, 1901, for each month, and running down to March, 1908. Can you finish that statement for the months subsequent to that time?—A. Yes, sir.

Q. I will ask you to do that, and make these statements when finished a part of your deposition as Government Exhibit No. 14.

(Counsel will have the opportunity to object to these records when they are finally completed.)

Q. You prepared, under the direction of a subpœna, I believe, a statement showing certain information about the average prices of various coal companies, for coal sold f. o. b. New York Harbor, from November, 1900, up to April, 1908, and that data is here before us. It does not appear that you have separated these into regions.—A. No; I combined them.

Q. You undertook to combine them?—A. I did combine them.

Q. What we want you to do is to make up the statement showing us the average price for these months for these companies, separating it into regions and not combining it. For instance, I understand that The Lehigh Valley Coal Company sends coal from more than one region.—A. All three.

Q. In this statement you have made up you seem to have combined the averages of these three.—A. Yes.

Q. I do not wish to put it into the record in that form, and would like to have that statement modified so as to show what the companies' averages were for each region, and with the data modified in that way we will introduce it. You stated to us a while ago that the railroad companies, for the information you furnished them, paid you a certain commission based upon the total tonnage. For the information you furnish the coal-producing companies and independent operators how were you compensated?—A. I am not compensated at all. That is, there is no agreement, unless I make some specific arrangement with them. That is, I may furnish them certain reports and they pay a nominal sum for them to cover postage, and the mere expense of getting the thing up and sending it out.

Q. Is there no compensation arranged for your work for these several producing companies that sell in New York and report to you monthly their average prices?—A. No, sir.

Q. You are not paid for that at all?—A. No, sir.

Q. There exists between the coal-producing companies which report their averages upon sales in New York Harbor to you from month to month and various other companies, contracts contemplating the purchase of coal produced by the independent producers on the basis of 65 per cent of the average price at tidewater. Those contracts provide for the appointment of "a disinterested expert accountant satisfactory to both parties to whom they shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold during the preceding month," etc. Are you the party who has been designated as the disinterested expert under these contracts?—A. Yes, sir.

Q. Under how many of these contracts have you been designated as the expert?—A. I do not just catch the question. You mean whether I have been designated in each particular case when a contract was put into operation?

Q. There are many of these contracts. Have you been designated formally under each contract, and, if so, how many?—A. No.

Q. You have no list of the contracts under which you have been designated?—A. No, sir; that is, independent of any specific designation with reference to these contracts.

Q. Have you any method of ascertaining how many of these contracts are in existence?—A. I only know the ones I have been informed were in existence, to which companies I sent copies of the reports. There may be others.

Q. Can you give us a list of those parties?—A. Yes.

Q. Please prepare that for us—a list of the parties whom you have been informed have contracts relating to the sale of coal based upon 65 per cent. Have those contracts been submitted or filed with you?—A. No, sir; I never saw one of them. I never saw an executed contract, I do not believe.

Q. So that you are not prepared to give any definite testimony about their contents?—A. No, sir.

Q. But you can give us a list of the parties to whom you sent out the monthly statements for settlements under these contracts?—A. Yes, sir.

Q. You are acquainted in a general way with the extent of the anthracite deposits in Pennsylvania?—A. Yes.

Q. What is the area?—A. A trifle less than 500 square miles; about 480.

Q. What do you include in that area? Do you mean under each acre coal is supposed to lie, or is that the area of the general district in which coal occurs?—A. That is what is called the area of the coal measures.

Q. Do you mean that coal is supposed to underlie each acre in that area?—A. Not necessarily.

Q. That is the general region in which coal occurs?—A. Yes; that could be said to embrace the outcroppings of the entire area.

Q. Of course some of the acres within that area would be barren?—A. I suppose so.

Q. You told us awhile ago the railroad systems which reported to you the amount of coal which was shipped over their lines. Are those all the railroad systems which enter into the coal regions of Pennsylvania?—A. Yes, sir; all into the anthracite regions.

Q. Can you tell us which of these roads carry or transport over their own lines to tidewater at New York?—A. Yes, sir.

Q. Please give them.—A. The Philadelphia and Reading; the Lehigh Valley; the Central Railroad of New Jersey; the Lackawanna; the Erie; the Pennsylvania; and of course the Ontario and Western ship their coal really to New York Harbor over the West Shore, except the coal which they send in boats.

Q. And the New York, Susquehanna and Western?—A. I embraced that in the Erie system.

Q. To which of the coal fields does The Philadelphia and Reading Railroad reach?—A. The southern field, and it has a spur up into the Lehigh field.

Q. Which field does the Central of New Jersey reach?

By Judge CAMPBELL:

Q. Where is the spur into the Lehigh field?—A. I can not tell you right offhand. Am I not correct in that?

Q. No.—A. Is that simply connecting coal?

Q. That connects with a tract belonging to the Central, and the Central uses our line.—A. I was thinking that a small amount of coal comes from the Lehigh field over the Reading road.

By Mr. MCREYNOLDS:

Q. Which field does the Central Railroad of New Jersey get into?—A. They get into the northern field and middle field.

Q. Which field does the Lehigh Valley Railroad get into?—A. The Lehigh Valley gets into each of the three fields.

Q. And the Delaware, Lackawanna and Western?—A. The northern field.

Q. And the Erie?—A. Into the northern field.

Q. And the New York, Susquehanna and Western?—A. Into the northern field.

Q. And the Pennsylvania Railroad?—A. All three.

Q. And the New York, Ontario and Western?—A. The northern.

Q. Can you tell us the terminal points at tide in New York Harbor to which each of these railroads delivers its anthracite coal?—A. The Philadelphia and Reading at Port Reading, and I think they are also delivering some coal to Port Liberty, but Port Reading particularly. The Lehigh Valley at Perth Amboy, and also right up here in the harbor, called float coal. The Central Railroad at Port Johnston. The Lackawanna at Hoboken, the Erie at Weehawken, the Ontario

and Western at Cornwall, and then it comes down in boats to New York Harbor or over the West Shore.

Q. Do you know what arrangement it has with the West Shore for its coal?—A. No, sir; I do not.

Q. Give us a general estimate of the coal produced by the various collieries in the anthracite region used by them or in that vicinity without being shipped over railroads.—A. It is about 12 per cent of the total production.

Q. What other means of getting coal out of the anthracite regions is there except over the railroads, as a practical question? Does not substantially all of it that leaves there, except what is used in the vicinity, go out over the railroads?—A. Practically all.

Q. Since you have been acquainted with the anthracite coal business has the number of individual operators without connection with the railroads increased or decreased?—A. Just what do you mean by the term "individual?" Do you mean absolutely independent, free from any contract?

Q. Yes.—A. I would say, generally speaking, they had decreased.

Q. Do you know what is meant by price f. o. b. New York Harbor by the selling companies that report to you from time to time?—A. Free on board New York Harbor.

Q. Free on board what and where? New York Harbor is a good long place.—A. At the shipping point; the ports that we have mentioned.

Q. You mean, then, by f. o. b. New York Harbor, that the coal is delivered on barges or on shipboard or otherwise at the terminal points of these railroads which you have mentioned?—A. Yes.

Q. Do you know anything about a differential which is allowed in rates over the railroads on account of different locations of their terminals?—A. I know there is a difference in the price of coal between what is known as upper and lower ports.

Q. What do you know about it?—A. I do not know anything about it except that there is a difference.

Q. Is it a difference in the price of the coal?—A. A difference in the f. o. b. price only, as far as I am concerned. That is all I know about it.

Q. What is the difference?—A. Five cents a ton.

Q. Coal at Port Reading f. o. b., we will say, is worth a certain price?—A. Yes.

Q. At Hoboken is the price the same?—A. Five cents more.

Q. Name the points where this 5 cents difference exists.—A. The harbor itself, Hoboken, Edgewater, and Weehawken carry the higher price. Perth Amboy, South Amboy, Port Johnston, and Port Reading have the differential of 5 cents.

Q. Is there any other differential than 5 cents?—A. Not that I know of.

Q. Is this 5 cents on all the sizes or only some of them?—A. That is on prepared sizes.

Q. How about the smaller sizes?—A. So far as I know there is not any. It is very difficult to tell that, on account of the smaller sizes being sold under contract extending over quite a period, and you can't tell.

Q. Do you know what the barge rate is from Port Reading to the docks opposite New York City?—A. I do not.

Q. You said awhile ago that your bureau prepared a map of the anthracite region.—A. Yes, sir.

Q. What is the latest map of that region?—A. It was issued the early part of this year.

Q. I have one here of 1904.—A. There is a later one.

Q. The last one was issued in 1908?—A. Yes.

Q. And when before that did you issue one?—A. 1904.

Q. And the one issued in 1908 presents the statistics down to what time?—A. To the close of 1907.

Q. In your examination by the Industrial Commission back in 1900 and 1901 you produced a map with certain information about coal regions. Is that map available?—A. I guess that is the issue before 1904. We issued one in 1901.

Q. It was that map you used at that time in your testimony?—A. I suppose so. This is the third or fourth issue we have made of it.

(Adjourned until Wednesday, October 14, 1908, 10.30 a. m.)

Met pursuant to adjournment at room 47, Post-Office Building, New York, N. Y., on Wednesday, October 14, 1908, at 10.30 a. m.

Present: The Examiner; James C. McReynolds, esq., and G. Carroll Todd, esq., for the United States; and Adelbert Moot, esq., J. D. Campbell, esq., Everett Warren, esq., William S. Opdyke, esq., J. F. Schaperkotter, esq., Robert W. de Forest, esq., J. L. Seager, esq., and W. S. Jenney, esq., for various defendants.

(It is understood that it shall not be necessary for the witnesses heretofore and hereafter examined to sign their statements unless in some particular case this is requested by counsel.)

W. A. LATHROP, a witness for the plaintiff, recalled.

The WITNESS. I would like to make a correction in my testimony given the other day. I stated that The Lehigh Coal and Navigation Company furnished Mr. Ruley with information as to tide prices—f. o. b. prices—for our coal. I find that is not the case.

Direct examination by Mr. MCREYNOLDS:

Q. Mr. Ruley would know whether that is the fact?—A. I think he does. Your letter to me, or Mr. Todd's letter to me, asking me to bring these tide prices was because you had discovered from Mr. Ruley's statement that we did not furnish them to him.

Q. Mr. Ruley's testimony is that you do furnish these prices.—A. We do not; you may have tonnages.

Q. Would it be your personal business to have knowledge on that question, as to whether these average prices of coal, f. o. b. New York Harbor, are reported by your company?—A. Yes; I think I should know that. Mr. Ruley can tell you that.

Q. He can tell us the real facts as to that even better than you can?—A. You may confirm it by Mr. Ruley, but I am telling you the fact.

Q. Do you receive from Mr. Ruley each month a statement of the average prices of coal f. o. b. New York Harbor?—A. Yes.

Q. Why is that information furnished you?—A. I can not tell why. I know we received it. It is received, in the first place, and of course our wages are based upon that information—our sliding scale.

Q. Is the sliding scale which determines your wage scale based on the average prices furnished by Mr. Ruley?—A. No; on the average prices furnished by Mr. Neill, commissioner.

Q. Who is Mr. Neill?—A. He is the Commissioner of Labor.

Q. Do you furnish Mr. Neill statistics of your sales?—A. Yes; I think we do. That I am not sure of, but I think we do.

Q. Then the information that is furnished you by Mr. Ruley concerning average prices f. o. b. New York Harbor has nothing to do with the wage scale?—A. Other than confirming the prices furnished by Mr. Neill.

Q. Put in the record so that it may be understood what Mr. Neill's connection with these prices is?—A. Mr. Neill, I think, is the authorized agent, the man who was appointed to receive statistics as to prices received at tide, on which wages were to be based, in connection with the settlement of the strike of 1903. I think the Commissioner of Labor is the man designated. That is a matter of record. I do not recall.

Q. You furnished to Mr. Neill every month a statement of the output of your mines with the prices you received for coal?—A. I think we do, yes, sir; the tide prices.

Q. And do you get anything from Mr. Neill every month?—A. Yes; we get from him a statement of the average prices received at tide.

Q. The average prices of what coal? What are the items which go in from which these averages are made?—A. I am not up on matters of detail of that kind; but I can give you a copy of what we do get from him.

Q. Are your prices a part of the statistics which go in and are used to make up these averages?—A. I suppose they are.

Q. Does your company sell to the trade all the coal it mines?—A. No; it sells some to commission houses.

Q. Does your company sell to any railroad company, or to any coal company controlled by any railroad company, any part of its output?—A. No.

Q. Do you buy coal from any producers?—A. We buy coal in one or two instances from some small lessees on our own property; yes.

Q. Where are the collieries of these lessees?—A. One is near Mauch Chunk, known as the Hacklebarney. It is a small outcropping colliery, and the coal is hauled down by wagon and delivered.

Q. Any others?—A. The other is known as No. 13. That is a dirt bank proposition mostly. There is little fresh mine coal in it.

Q. Are those the only two?—A. Yes.

Q. And what is the total output?—A. It is not large. I imagine in one case it is 300 or 400 tons a month, and in the last case possibly a couple of thousand.

Q. Is that coal purchased on what is known as the 65 per cent basis?—A. No, sir; there is a separate deal for it.

Q. And not based on the price of coal at tide?—A. I think not. I can not recall just the terms of that. It is a small amount at all events.

Q. What is the capital stock of The Lehigh Coal and Navigation Company?—A. About $19,000,000.

Q. What is its bonded indebtedness?—A. Something over $17,000,000. I do not remember the exact figures.

Q. Is that bonded indebtedness held or controlled by any railroad company, as far as you are aware?—A. Not as far as I know.

Q. Is the capital stock of your company in a voting trust?—A. Yes.

Q. How long has it been in it?—A. I do not remember the date. I should think about four years.

Q. In that voting trust is a majority of your capital?—A. Yes.

Q. Is there an option outstanding on it?—A. Not as far as I know.

Q. What is the purpose of that voting trust?—A. You will have to ask the people who made it. I do not know. It was before my connection with the company.

Q. Where is the stock deposited; with what concern?—A. I do not know that I can tell you just where it is deposited. It is controlled by the voting trustees in Philadelphia.

Q. It is deposited with the Provident Life and Trust Company, of Philadelphia, is it not?—A. That is right; yes.

Q. Your company owns a canal?—A. Yes.

Q. Where does that canal lead from and to what point?—A. It runs from a point just above Mauch Chunk to the Delaware River at Bristol—that is, it owns part of it and leases the balance.

Q. Is that canal operated now actively?—A. Yes.

Q. How much coal does your company ship over it?—A. About 150,000 tons per annum. It varies from year to year.

Q. Where does that coal go mostly?—A. It goes to the line points along the canal and points along the Schuylkill and Delaware rivers, near Philadelphia.

Q. These trustees who hold a majority of your stock have the right to sell it, have they not?—A. I believe they have a right to sell it at not less than $135 per share.

Q. And the shares are $100 each?—A. No; $50.

Q. Who are your sales agents in New York?—A. Do you mean the general sales agent of the company?

Q. Yes.—A. Richard T. Davis. He is our general sales agent, and he has offices here.

Q. Is he the agent for any other company here?—A. No.

Q. I show you here what is called the general map of the anthracite coal field of Pennsylvania and adjoining counties revised to January, 1908, and issued by the bureau of anthracite coal statistics of Philadelphia. Indicate on this map the points, so that they can be told by one reading the record where the property of The Lehigh Coal and Navigation Company is.—A. The principal part of the property lies east of Tamaqua; it lies in the southern coal field east of Tamaqua and between that and the Lehigh River on the east.

Q. Are the collieries operated by The Lehigh Coal and Navigation Company within that district?—A. Yes; it has other property here that I can show you on this map in that vicinity, in the vicinity of Tuscarora, and it is interested in other property in the neighborhood of Port Carbon, in this section.

By Judge CAMPBELL:

Q. Is that undeveloped?—A. Yes; the last one is undeveloped.

By Mr. MCREYNOLDS:

Q. The collieries which you operate are indicated by number on this map?—A. Yes.

Q. Read into the record what they are.—A. They are here, as indicated; they are numbered as 315—these are not the numbers we know them by—314, 313, 312, 311, 310, 309, 308, and 307.

Q. Your company owns and operates all the collieries in the southern coal field lying between the Lehigh River on the east and Tamaqua on the west?—A. That is right.

Q. What railroad property in that section is owned and operated by The Lehigh Coal and Navigation Company?—A. The Panther Creek road.

Q. With what railroad systems does this Panther Creek Railroad, operated by your company, connect, and at what points?—A. It connects at Tamaqua with the Philadelphia and Reading, and at Hauto with part of the Jersey Central system.

Q. Are all your collieries reached by this Panther Creek Railroad?—A. All but one.

Q. Which one?—A. No. 307. That is directly on the Nesquehoning Valley Railroad, which is in the Jersey Central system.

Q. Does your company own substantially all the coal lands lying in the coal region west of the Lehigh River and east of Tamaqua?—A. Yes.

Q. As I understood you when on the stand before, your company ships a good deal of coal by way of Tamaqua and then over the Philadelphia and Reading to Philadelphia and other points along the system?—A. Yes; the points reached by that road.

Q. The Philadelphia and Reading Railroad reaches collieries lying in the southern coal field to the west of Tamaqua, does it not?—A. Yes.

Q. In transporting coal from these collieries does it come up to Tamaqua and then go south over the line of the Philadelphia and Reading?—A. The coal from these collieries? I do not know whether all our coal goes to Tamaqua and from there to delivery points on the Reading system.

Q. Your coal bound to Philadelphia goes over what line?—A. Going by way of Tamaqua?

Q. Yes.—A. I do not know that I can tell you. The Reading company handles it as best suits them. It goes over their system.

Q. It goes first to Tamaqua?—A. Yes.

Q. And there it is delivered to the Reading system?—A. They handle it.

Q. They handle it by way of Reading, and from there to Philadelphia?—A. I suppose so. I do not know how they handle it.

By Mr. SCHAPERKOTTER:

Q. You do not know?—A. No; I have no concern in knowing, as long as it gets to destination.

By Mr. MCREYNOLDS:

Q. Is there a joint rate between the Philadelphia and Reading and the Panther Creek road for coal going to Philadelphia from your colliery?—A. No.

Q. The rate over the Reading then begins at Tamaqua?—A. At Tamaqua.

Q. Is there a joint rate between the Panther Creek road and the Central of New Jersey, for coals moving from your colliery to points along the New Jersey Central line?—A. No; we deliver it at Hauto.

Q. And there the rate begins?—A. There the rate begins.

Q. Is the cost of mining coal in your various collieries substantially the same?—A. No; it varies in the different collieries.

Q. Give us the range within which you would say it varies?—A. Do you mean the entire mining cost?

Q. Yes.—A. Above which we must sell the coal to get a profit?

Q. I understand it costs you a certain amount of money to mine the coal. I do not care about accurate details, but I want to know the limits.—A. It depends on circumstances. In the first place, the cost is made up on the average of all the production, and while it is an average cost it is not the price or cost above which you must sell prepared coal to get a profit.

Q. What I want to get at is whether the range of prices which you estimate as the cost of mining the coal in your several collieries—we will say one colliery costs $1.50 and maybe another costs $2.—A. The reason of that is that the steam sizes are sold at prices less than the average cost of production. They are, as it were, by-products, and they are sold at such a price as we can get in competition with bituminous coal, and they are sold at less than the average cost of production. Therefore, in order to make a profit on prepared coal it has to be sold at a considerably higher price than the average cost of production.

Q. You are getting away from the point to which I want to direct your attention. What I want to know is the range of prices which it costs your company to produce coal from its various collieries. I understand the cost is not the same in every colliery; in some it is more and in some it is less.—A. You mean the average cost?

Q. The average cost of coal, for example, from 307 would be one cost and 310 another cost. I want the range—the lowest and the highest.—A. You mean based upon the entire production?

Q. Yes.—A. Counting buckwheat and all the rest?

Q. Yes.—A. It will vary, I should say, from $1.75 to $2.25 in round figures. That is predicated on an average cost of all sizes, including No. 3 buckwheat, for which we get 35 cents a ton.

Q. Do you sell much coal along the line of the New Jersey Central Railroad between your mines and the harbor of New York?—A. Yes; we sell all we can find customers for.

Q. How do the prices compare with the prices at tide?—A. They are usually higher.

Q. Materially higher?—A. I do not know that I could answer that exactly. They are higher.

By Mr. SCHAPERKOTTER:

Q. As a matter of fact you only sell when you get higher prices?—A. That is the only inducement to sell along the line, to get as good or a better price.

By Mr. MCREYNOLDS:

Q. The Lehigh Coal and Navigation Company, in addition to the Panther Creek Railroad, which we have already spoken about and described, owns certain other railroad property, does it not?—A. Yes.

Q. Tell us what that property is.—A. It owns the Lehigh and Susquehanna Railroad and branches, now leased to the Jersey Central.

Q. Where is the Lehigh and Susquehanna Railroad, and what are the points between which it extends?—A. The Lehigh and Susquehanna Railroad system was built under different charters; but the entire system leased to the Central runs from Phillipsburg, N. J., to Scranton, Pa., and there are branches up into the coal regions, one from White Haven to Upper Lehigh, and another from Nesquehoning Junction, near Mauch Chunk; and then the Navigation Company owns the Lehigh and the New England road. That extends from Slatington, on the Lehigh Valley, and Bethlehem, on the Lehigh and Susquehanna, east toward the Poughkeepsie bridge, with an arrangement through to Campbell Hall. It does not own all that line.

Q. Is that leased to the Central Railroad of New Jersey?—A. No.

Q. Who operates that line?—A. The Lehigh and New England Railroad Company.

Q. In connection with what system?—A. Both the Lehigh Valley and the Jersey Central.

Q. Do you have traffic arrangements with both?—A. They make through rates; yes.

Q. Were the roads you have described originally built by The Lehigh Coal and Navigation Company?—A. The part leased to the Jersey Central, I believe, was all built by the Navigation Company.

Q. And the other line?—A. The other line was purchased afterwards, before my connection with the company.

Judge CAMPBELL. The witness ought to state that they bought a controlling interest in the capital stock, not the railroad. The railroad is operated by the corporation itself.

A. It is all through a purchase of stock.

Q. The Lehigh and New England road is a separate corporation?—A. Yes.

Q. I understand The Lehigh Coal and Navigation Company owns a controlling interest in that stock.—A. That is right.

Q. But as to the Lehigh and Susquehanna Railroad Company, the actual ownership of the railroad was in The Lehigh Coal and Navigation Company?—A. Yes; and they had the right under their charter to build that railroad.

Q. What is the relationship of The Lehigh Coal and Navigation Company to the Wilkes-Barre and Scranton Railroad?—A. That was built under a separate charter, and was leased at the time the Lehigh and Susquehanna was leased. That is a part of the system going to Scranton.

Q. Is the Tresckow Railroad in the same situation?—A. I think that was built under a separate charter also.

Q. Is that leased to the Central of New Jersey?—A. Yes.

Q. And the Nesquehoning Valley Railroad Company, is that in the same situation?—A. Yes. They are all described in the lease, a copy of which I gave you.

Q. The lease which you produce, under which the Central of New Jersey operates the Lehigh and Susquehanna Railroad, provides for a payment of a certain percentage of the gross receipts to the lessor. Are settlements made from time to time with the New Jersey Central on that basis?—A. You will remember in that lease that arrangement continued until one-third of the rental reached a maximum figure, and it is now settled on that maximum figure.

Q. How long has it been settled on that maximum figure?—A. Before my connection with the company. I can not tell how long.

Q. For two years or more?—A. Yes; I know for more than two years.

Q. Are the terms of that lease which you have already introduced being carried out and the roads being operated under it to-day?—A. Yes.

Q. And have they been since your connection with The Lehigh Coal and Navigation Company?—A. Yes.

Q. Are the collieries of your company operated to their capacity throughout the year, and have they been since your connection with it?—A. Practically so. There are times during the summer when that

is not done, because we can not find the people to buy our coal. Except that they are worked practically full time.

Q. What proportion of the entire production of anthracite does your company put out?—A. I think the total production last year was about 67,000,000 as near as I remember, and our production was not quite 3,000,000. That would be about 5 per cent, a little less than 5 per cent.

Q. Do you endeavor to so operate your mines as to produce about that per cent from month to month of the entire output?—A. No, sir; we do not pay any attention to that.

Q. You pay no attention to the output of the other companies?—A. We get out all the coal we can find customers for. We would be glad to get out more if we could find them.

Q. Did you ever try the expedient of reducing the price of coal to get customers?—A. We can not afford to, because we make very little money now on the anthracite business. The average during the last three years has been less than 5 cents a ton.

Q. You mean operating all your collieries?—A. On all sizes of our coal.

Q. Do you sell coal that you get out of the collieries at a high cost of production at the same price as that which you get from the collieries where the operation is cheaper?—A. Yes, sir.

Q. I asked you to produce for us the average prices at which your coal has been sold at tide.—A. Yes. I have them here, since January, 1901. They show the average prices since January, 1901, and I append them to this deposition as Government Exhibit No. 3.

Judge CAMPBELL. I object to the items in this table as immaterial and not pertinent to any issue properly raised in the pleadings.

Mr. WARREN. I object on the ground of incompetency as well as immateriality.

Mr. DE FOREST. I object on the ground of immateriality.

Mr. SCHAPERKOTTER. I object on the same ground.

Q. When you were here last I asked you about circulars concerning prices issued by The Lehigh Coal and Navigation Company. Have you investigated what circulars you have issued?—A. Yes. I sent them to you or to Mr. Todd.

Q. Do you remember during what time you issued circulars of prices at tide?—A. I think we have not issued any since September a year ago. That is my recollection. They were all sent to you, all that we had.

Q. Has The Lehigh Coal and Navigation Company ever owned anthracite coal lands in what is known as the "northern region?"—A. Yes; at one time they owned lands in the Wyoming Valley.

Q. When were they disposed of and to whom?—A. I can not give you the date of that. They were disposed of to The Lehigh and Wilkes-Barre Coal Company at some time, long before my connection with the company. I do not know the circumstances.

Q. Do you have any information about the time?—A. It would be a guess. It could be easily established, but I do not know it. I

really do not know how long ago it was. I think it was about the time the lease was made, but I am not sure of that.

Q. The Lehigh and New England Railroad was constructed for the purpose of giving the coals at that time owned by The Lehigh Coal and Navigation Company an outlet?—A. No; it was constructed as a private enterprise, and I think originally the intention was to go through to the west, to make a through line connected with the Poughkeepsie Bridge, for general business.

Q. What are the points between which the Lehigh and New England road operates?—A. Between Slatington, on the Lehigh Valley Railroad, and Bethlehem, on the Jersey Central. Those are the two western termini. The other point is Campbell Hall.

Q. What does it connect with at Campbell Hall?—A. It connects with the New York, New Haven and Hartford system—the Poughkeepsie Bridge system I suppose is a better term for it.

Q. What is the point in New York Harbor at which the coal from your collieries is delivered?—A. Elizabethport. That is within the harbor limits.

Q. Is Elizabethport one of the terminal points at tide of the Central New Jersey Railroad?—A. Yes.

Q. The Lehigh Coal and Navigation Company has issued circulars showing its prices of coal at tidewater, has it not?—A. Yes.

Q. Do you know when those circulars were issued?—A. Here is a list I gave you of all that have been issued since April 1, 1907. The beginning is April 1, 1907, down to date.

Q. These indicate that the prices were published by The Lehigh Coal and Navigation Company each month, beginning April 1, 1907, and extending down to September 3, 1907. Is that correct?—A. Yes; that is right. That is the last one issued.

Q. Were circulars showing prices f. o. b. at tidewater discontinued after September 3, 1907?—A. Yes. We only issued mine circulars since that time.

Q. What do you mean by mine circulars?—A. The prices at the mines instead of at tide.

Q. Why was that change made?—A. It answers all purposes. There was no other reason for it.

Q. Does not your company sell coal f. o. b. New York Harbor?—A. Yes. It is the mine price plus the rate of freight. The mine circulars answer all the purposes of the tide circulars.

Q. The prices you give on these circulars do not apply to line points?—A. Yes; that circular covers any point. The price is the circular price plus the amount of freight to the point of destination. That applies to tide and all points.

Q. These circulars indicate a reduction from the figures given of 50 cents per ton on the 1st of April, then 10 cents less on the first of each month up until August 1, when the reduction from the published rate is 10 cents, and in September the original published rate is given?—A. Yes.

Q. Has that been the custom of coal companies, to give discounts of that character every month as long as you have been with the company, beginning in April?—A. Yes: only our discounts sometimes are more than that, as you notice by our tide prices. We do not always get our circular prices, I am sorry to say.

Q. As a specimen of these circulars, I ask you to make part of the record as Government Exhibit No. 4 the one issued April 1, 1907, and also the one issued April 1, 1908, which is marked Government Exhibit No. 5.—A. I do so.

Cross-examination by Mr. MOOT:

Q. Why is this discount of 50 cents made?—A. It is in order to distribute the mining over the year better.

Q. How does it do it?—A. It is an inducement to the customer to buy coal in the spring and carry it.

Q. Is that any advantage to the company?—A. Yes; it distributes the mining and keeps the force together better; altogether a better regulation of the business.

Q. In other words, if they can buy cheaper in the summer, when you can mine cheaper, you can afford to sell cheaper in the summer than in the winter?—A. Yes.

Q. It distributes output over the year instead of a few months?—A. Instead of a few months in the fall.

Q. How long has that custom prevailed?—A. I can not give the years, but a number of years.

Q. Have you always issued mine circulars?—A. I did not look back of 1901. I do not know.

Q. Did you find mine circulars as well as tide circulars as far back as you did look?—A. I think not.

Q. About when do you think the mine circulars commenced?—A. They were issued since 1901.

Q. The substance of that is that it is a circular giving the price of the coal at the mine?—A. Yes.

Q. And your other circular was a circular giving the price of coal at tide?—A. Yes.

Q. And the difference between the two circulars is that one leaves the rate out and the other covers the rate?—A. Yes. The mine circular, by adding the rate of freight to any point to the circular, you get the circular price at the point of destination.

Q. You spoke of the tide prices usually being lower than the price along the line, the prices you get for your coal. How appreciable is that difference?—A. Mr. McReynolds asked me that same question, and I was unable to answer it. I do not recall. There is an appreciable difference. It varies in different markets.

Q. Can you tell me what it is due to?—A. I do not know. I can not tell what it is due to. It is market conditions, I reckon. That is all I know of.

Q. How about your customers? Are they pretty constant in this business or are they fluctuating?—A. They are pretty constant, and yet there are also a good many of them fluctuating.

Q. In other words, they are as in any other business, the steady and reliable sort of fellow hangs to you and the fluctuating sort of chap goes from one party to another?—A. Yes. If a man likes our coal and it suits his purposes, and its preparation is all right, he stays with us, unless he has some reason to change, either the price, the grade of the coal, or something else, and then we lose him. It is a commercial proposition.

Q. Do you know whether Elizabethport has a difference of 5 cents as compared with Jersey City, a differential, as they call it?—A. I do not recall whether that applies to Elizabethport or not. You will have to ask some one else. I do not know.

Q. Your coal is produced in what is called the middle field?—A. The southern field.

Q. The eastern end of the southern field?—A. Yes.

Q. How is that coal in quality, the prepared sizes of that coal in quality, as compared with the other fields? Is there anything about the quality to make it sell at a different price from the other coal?—A. For some purposes it is better suited. It is a very hard coal and not as free burning as some of the northern coals and some of the western coal. It is known as hard white ash coal.

Q. And generally speaking, how do you find the fact to be, with reference to that coal, as to whether it will sell for a little more, or a little less, or about the same as other coals?—A. For some purposes it will sell for more and for other purposes it will sell for less. For gas purposes we get a good price for it. For some domestic purposes it is not as good as Wyoming coals.

Q. I see by your statement of the output and prices that you have furnished here from 1901 down to September, 1908, that the prices vary, they do not seem to be exactly the circular prices even on the prepared sizes, they go up and down, and when we come to steam sizes there seems to be a greater difference. Can you tell why that is?—A. It is the result of competition for trade. We sell our coal at the very best price we can get for it. It depends on how bad the other man wants it what price we have to take.

Q. Do the steam sizes have much to do with the matter of your profit?—A. The whole question of cost, figuring the cost of anthracite coal, is a very complicated one, due to the fact that these steam sizes are by-products really in the manufacture of domestic coal, and we sell them for what we can get, and when you figure your profits you really figure on making your profits on the prepared coal.

Q. Is competition keener in steam sizes than prepared sizes?—A. I do not know that it is, except there is also the outside competition of bituminous coal.

Q. Bituminous coal can not compete with the prepared sizes of anthracite for our homes, or at least it does not?—A. It does not.

Q. And bituminous coal is the natural steam coal?—A. Yes.

Q. And anthracite coal is not a natural steam coal?—A. That is right.

Q. So you have to sell your anthracite steam sizes at a price which underbids bituminous steam coal sufficiently so that you can get your market?—A. Yes.

Q. Is that the reason that the steam sizes of anthracite coal vary so materially from month to month and year to year?—A. Yes. It is partly due to the competition of bituminous and partly due to competition with other anthracite companies who also have small coal to sell, by-products they have got to get rid of.

Q. If they can not sell it at one price they have to sell it at another?—A. That is what they do.

Q. It does not go into the houses, and therefore only steam plants use it?—A. Steam plants.

Q. Can you give me an idea about what proportion of your coal is steam sizes?—A. If you figure pea coal as a steam size, and that is generally the case, it runs about 50 per cent.

Q. It is usually figured as steam coal?—A. Yes; although a small amount is used for domestic purposes.

Q. Is that a greater or less percentage than the percentage of other companies generally?—A. It is a greater percentage than usually obtained in the northern field, but there are a great many in the southern operation that also make a large amount of fine coal, small coal.

Q. Why is that percentage greater?—A. The veins lie on steep angles and it is more or less crushed, naturally. The mining is done up on the pit, and the breasts are worked full—that is, they are kept full of coal—and the miner is on top working up all the time. The result is the coal is very much ground up and crushed in coming out, and there comes with it all the refuse in the vein, very frequently large quantities, and it grinds this coal up a good deal.

Q. Does it make any difference whether the coal that you find is very hard or more pliable, as to steam sizes?—A. Yes; all that influences the result.

Q. Your pea coal is coal that will go through a mesh of what size?—A. Three-fourths of an inch square, and over a mesh of half an inch. The meshes vary a little.

Q. Is that the way the coal is separated as to sizes?—A. It runs over a screen and is separated into sizes.

Q. Your miner takes it out with some explosive in great lumps?—A. Yes.

Q. It is brought to the shaft and elevated up the shaft to the breaker?—A. Yes.

Q. And there it is put through some sort of machinery that crushes it into the desired size for domestic use?—A. Yes.

Q. In crushing it to that size it necessarily crushes more or less of it a great deal smaller?—A. Yes.

Q. It is these smaller sizes which are the steam sizes?—A. They are what would otherwise be waste sizes.

Q. They used to go to the culm bank?—A. They did.

Q. And only of recent years have they been sold?—A. That is all.

Q. Is the amount of steam coal which is sold in recent years increasing or decreasing?—A. It has been increasing.

Q. Why?—A. Owing to a better understanding of the way to burn and handle these small sizes.

Q. So that the price you are able to get from these steam sizes, as by-products, and the amount you produce of them, largely determines the profits or loss of your coal mining, on your entire coal-mining business?—A. Yes. You take those in as costing what you get for them. That throws all the rest of the cost of mining on the prepared coal, and you figure the price at which you can sell that in that manner.

Q. For instance, in your mining enterprises about 50 per cent is steam sizes, sold in this way as you have described in competition with bituminous coal of West Virginia and Pennsylvania and the country generally?—A. Yes.

Q. Have you anything to do with bituminous-coal mining?—A. Yes; I have been connected with bituminous mining for a good many years.

Q. Does your company?—A. No; not at all.

Q. But you know about it generally?—A. Yes.

Q. Is it a fact that the bituminous coal is very freely produced in large quantities all over the country and is a competitive product?—A. Yes; there is great competition in this market for steam coal.

Q. A great deal of it is used right here in New York and about New York?—A. Yes.

Q. Now, this steam coal, these steam sizes, how are they usually sold? Are they usually sold by the carload or usually sold on contract for a period of time?—A. They are sold both ways. They are sold by the carload at so much per ton per car, and also sold on long-term contracts.

Q. In your own companies which way is the bulk of it sold?—A. I think the majority of ours is sold on contract running more than a year.

Q. Why is that? Is that because you have to sell it that way in competition with bituminous coal?—A. Yes, because we thought it was good business.

Q. Bituminous coal is also supplied to large concerns on time contracts at fixed prices?—A. Yes. Most bituminous contracts only run for a year, but some run longer than that.

Q. You spoke of the difference of the cost in your collieries of producing your coal, and your range was about 50 cents a ton?—A. Between individual collieries.

Q. Between the collieries producing the cheapest and the colliery producing it at the greatest expense?—A. About that.

Q. When you speak of cost, does that include anything for interest, and capital, and royalty?—A. No. That is the actual operating cost.

Q. That is the cost of labor?—A. Labor, material, and repairs, supervision, everything except the general office expenses, interest, depreciation, and royalty.

Q. What you call fixed charges is not figured in there at all?—A. The price that I gave you originally, $1.75 and $2.25, that is the operating cost.

Q. In other words that covers the material used in the mine and the labor in the mining?—A. Yes.

Q. And that is all that it covers?—A. It covers the supervision, and the Philadelphia office expenses, and taxes, and insurance, but not interest nor depreciation.

Q. Nor royalties?—A. Nor royalties.

Q. Does it cover any dividends or profits?—A. No.

Q. You spoke of your canal. Does your canal go clear to Philadelphia?—A. It goes to Bristol, about 15 or 18 miles above Philadelphia.

Q. That is tide on the Delaware River?—A. Yes.

Q. And from there it would reach Philadelphia by going down the river?—A. Towed down the river.

Q. Does some go to Philadelphia that way in your own boats?—A. Yes, a good deal of it.

Q. How near to your mines or collieries does your canal run?—A. I think about 12 miles, on an average.

Q. How do you get your coal from your collieries to the canal?—A. It is taken by the Jersey Central from Hauto to the canal.

Q. Your boats used on the canal are boats of what size?—A. They hold 100 tons.

Q. They are small?—A. Yes.

Q. How long has that canal been there?—A. I think it was built about 1823.

Q. And it has been operated ever since?—A. Except when it has been put out of business by flood or troubles of that kind.

Q. Do you send any coal to Philadelphia by rail?—A. Yes.

Q. Why do you send coal to Philadelphia by rail instead of by canal when you own this canal?—A. We have a great variety of customers that we could not make delivery to by canal and can only be reached by rail.

Q. How is it where you can reach a customer by canal? I think you said you shipped about 150,000 tons by canal last year. Were you able to send that by canal so that it showed a profit on the operation of the canal or a loss on the operation of the canal?—A. I am sorry to say the canal shows a loss.

Q. Any considerable loss?—A. It is my recollection about $39,000 last year.

Q. So that if you had no canal at all and had sent all your coal to your market by rail you would save that much money?—A. No, I would not say that. We would have lost more on the canal.

Q. This Panther Creek Railroad, as I understood you to say, is practically what might be called your gathering railroad?—A. Yes.

Q. It is built to the breakers at your collieries?—A. Yes.

Q. And it is built to them from time to time as you need to extend it to them?—A. I suppose so, as they were developed.

Q. Is that railway to these collieries expensive to build, maintain, and operate?—A. Yes, very much so.

Q. Does any other railroad reach your collieries?—A. No.

Q. Have you any idea of what the expense is to complete or build a railroad per mile in that country, to collieries in that way, and maintain it?—A. I could not give you an average figure; no. It is high, because the country is mountainous and rough, and the grades are steep.

Q. When your colliery is worked out is the railroad then of any use any further?—A. No, sir; none at all.

Q. There is no other traffic for the railroad?—A. Not in our Panther Creek case.

Q. So that the railway in some fashion must pay for itself during the life of a colliery?—A. Yes.

Q. And pay its own cost of operation?—A. Yes.

Q. And the colliery's life would run over about how many years?—A. I could not give you that. I do not know.

Q. You can not tell about that?—A. I do not know.

Q. You spoke of operating your collieries to their capacity if you could get the customers for your coal, and you said you did not put the prices lower because your profit was too small. Does mining and selling coal in that respect differ from any manufacturing enterprise in this, to wit, that whether you run your factory or mine at full capacity or not depends on whether the profit is sufficient, so that you can run it at a profit?—A. It is exactly parallel.

Q. The mining proposition is substantially a manufacturing proposition?—A. Yes, sir; it is, in that respect.

Q. Only in mining you are using up your capital all the time?—A. Yes.

Q. If you do not charge up anything for depreciation or royalty, or anything else, when you get through what have you got?—A. You have got the bag.

Q. You have got a hole in the ground?—A. You have got a hole in the ground.

Q. In that respect it differs from a manufacturing enterprise, in that they in some fashion get their return as it goes along?—A. I should say in that respect.

Q. You have breakers at all these collieries?—A. Yes.

Q. They cost about how much apiece?—A. Modern breakers cost anywhere from $200,000 to $250,000.

Q. And your collieries themselves, to get your shaft down and get them developed, what does that cost?—A. You can not develop a modern colliery much short of $1,000,000, counting breaker and other appliances.

Q. When that is exhausted is there anything there in the way of salvage?—A. Very little.

Q. It is practically so much capital that is gone?—A. There is some scrap in the breaker; not much beyond that. The shaft is of no value except for the operation.

Q. The salvage on that $1,000,000 would be about what per cent; 1 per cent or less?—A. Possibly 2 or 2½ per cent.

Q. This voting trust that you mentioned; that is some stock put into the hands of the trustee named by the stockholders who own it, with powers to the trustee to use the stock in accordance with the trust?—A. Yes.

Q. Your company has nothing to do with that?—A. Absolutely nothing as a company.

Q. They are indifferent whether a stockholder holds and votes his own stock and manages it or whether he gives it to some trustee to do it?—A. That is it.

Q. For purposes of his own?—A. We have no concern in that.

Q. You do not know what the purposes were?—A. No.

Q. It is before your day?—A. Before my day; yes.

Q. The two lessees of yours from whom you buy a little coal, is that represented by any written agreement or a mere verbal transaction?—A. I think in one case it is covered by a written agreement and in the other by a letter only. The first colliery I mentioned is not reached by any railroad. The coal is mined and hauled by wagon and loaded on a siding on the Jersey Central. The other is reached by the Panther Creek road. That is the colliery we know as No. 13.

Q. Your company is a company which the strike commission tells us commenced mining in 1820, and the canal was put through in 1823; that is before there were railroads, and I infer in the beginning they had to wagon the coal to the canal?—A. They brought it down by tramroads.

Q. What is the substance of these leased operations?—A. I do not recall the details. They are really of no particular importance. One of them is a tenant at will, I know. The other has very little except the dirt-bank coal.

Q. Your wages have been based on f. o. b. New York prices since the strike commission made its award of wages?—A. I understand so; yes, sir.

Q. If coal cost above $4.50 under that report (prepared sizes) then the employees have an interest in whatever is received—the miners have an interest in whatever is received above that sum in the way of an increasing sliding scale of wages?—A. Yes.

Q. And to find out what it is you are to pay them under that award you have to have the figure showing at what price the coal is selling for on an average here in New York, so as to see whether they have any increase in wages under the sliding scale or not?—A. Yes.

Q. And if so, how much?—A. We have to know these prices.

Q. To pay your miners?—A. Yes.

Q. They are paid on the basis of these prices under that award?—A. Yes.

Q. And have been since that award was made in 1903?—A. Yes.

Q. It dated back to November, 1902?—A. Yes.

Q. The sliding scale went ahead from March or April?—A. Yes.

By Judge CAMPBELL:

Q. Do you recall what is called the Schuylkill Valley line of the Philadelphia and Reading Railway, extending from Pottsville to Tamaqua, the Schuylkill Valley branch, they call it?—A. From Tamaqua to Pottsville?

Q. Yes.—A. Straight down the valley?

Q. It does not go straight through to Pottsville, but in that direction.—A. Yes.

Q. You recall also the little Schuylkill Valley?—A. Running down to Port Clinton, yes.

Q. That is probably the line over which your coal from the Panther Creek region proceeds to Philadelphia, as it would be the natural water grade line by way of Port Clinton and Reading to Philadelphia?—A. That would be the natural line, yes, but the question asked me was whether it went a certain way.

Q. To get to New York it would have to be transferred from some point at or near Philadelphia, over the North Penn and Bound Brook system of the Reading Railway system and the Jersey Central, in order to reach Elizabethport where you tranship your coal?—A. If sent by Tamaqua.

Q. By our system?—A. Yes, that is the only way to get there.

Q. Would not that be an intolerably roundabout line as against the natural line down the Lehigh and Susquehanna?—A. Yes.

Q. The only reason for shipping coal that way would be to reach that line and Philadelphia track delivery?—A. That is all the coal we send that way.

Q. That is the only economic reason there would be for sending it that way?—A. Yes.

Q. I understand you also reach other track deliveries in Philadelphia by the Belvidere branch from Phillipsburg?—A. Yes.

Q. You ship your coal from the mines in connection with the Jersey Central's operation of the Lehigh and Susquehanna to Phillipsburg, N. J., where it is diverted down the river by way of the Belvidere branch of the Pennsylvania Railroad, and then to the track deliveries on the Pennsylvania system in Philadelphia?—A. That is right.

Q. You could not reach New York naturally and economically by using either the lines of the Philadelphia and Reading Railway system or the lines of the Pennsylvania Railroad system?—A. No; we could not reach New York in that way.

Q. You have a connection to Philadelphia, a physical connection, with the track of the Lehigh and Susquehanna to the North Pennsylvania Railroad track of the Reading leased line, at South Bethlehem?—A. Yes; we do send some coal that way.

Q. And some coal reaching local territory which is reached by that line goes that way?—A. Yes; wherever they can make the best delivery.

Redirect examination by Mr. McREYNOLDS:

Q. Is it not the fact that Tamaqua is the gathering point for much coal mined along the different branches of the Philadelphia and Reading Railway Company?—A. I rather think not. I think it is yarded below that. I think it is yarded at some point below that.

Q. Is not a great deal of coal shipped over the Mahoning division of the Reading Railroad through Tamaqua and then down the Schuylkill branch to Port Clinton?—A. I am not familiar enough with that.

Q. You know that the Reading road reaches mines in the western division of the central field?—A. Yes.

Q. And that the coal is transported down that line by way of Port Clinton and on to Reading?—A. I suppose it is.

Q. Is there any other way to get it out?—A. Yes; several other ways.

Q. Is not much coal shipped from the western division of the middle field along the Philadelphia and Reading Railway to Tamaqua and then on down the Schuylkill River division to Port Clinton?—A. I do not know.

Q. What is the northern terminus of The Lehigh Coal and Navigation Company's canal?—A. Port Carbon; about a mile north of Mauch Chunk.

Q. How far is it from any point on the Panther Creek Railroad?—A. I think it is about 12 miles, in my recollection.

Q. You said you lost $39,000 operating that canal during the last year?—A. Yes.

Q. Was that loss on this coal sent over that canal or on the total operation?—A. The entire operation.

Q. You carry other freight besides your own?—A. Not very much. We do some.

Q. Do you charge your coal company the same rates which you charge other people?—A. Yes.

Q. And that is figured into that $39,000 loss?—A. Yes.

Q. Have there been any material changes in your published quotations of coal prices since you became connected with The Lehigh Coal and Navigation Company?—A. In the circular prices?

Q. Yes.—A. They are set forth in there in these circulars. There have been those changes. There have been changes during different periods of the year, as stated in these circulars.

Q. Do the coals from your collieries come in competition in the market with the coals of the collieries in the other trade regions of the anthracite district?—A. They do in certain markets, tide markets for example.

Q. Has the railroad rate for transporting coal from your collieries to tidewater been the same ever since you have been connected with The Lehigh Coal and Navigation Company?—A. Yes.

Q. When you sell coal f. o. b. at New York Harbor the seller stands the loss of the wastage caused by loading on barges, does he not?—A. Where it is shipped on railroad weights, yes.

Q. So there is a considerable difference between the final price paid by the purchaser, if he buys at the mines plus the railroad rates, and if he buys at New York Harbor, is there not?—A. It would make no difference to us. It would be sold on railroad weight whether he took his coal at tide or whether he took it at the mine. It would make no difference to us.

Q. You mean in the settlement with him you would only charge him with what he actually got at tide?—A. Yes, he is sold on the railroad weight of coal. In other words, the coal is not reweighed; it may be reweighed at tide, but it is the railroad weight on which we pay the freight and on which he pays the tonnage.

Q. Where is the Nesquehoning Tunnel?—A. It is between the Panther Creek and Nesquehoning Valley railroads, near Lansford.

Q. What is the nearest point on the Lehigh and Susquehanna?—A. Hauto.

Q. It is sometimes called the Lansford Tunnel, is it not?—A. Yes.

Recess until 2.15 p. m.

2.15 O'CLOCK P. M.

WILLIAM W. RULEY, a witness for the plaintiff, recalled.

Direct examination by Mr. MCREYNOLDS:

Q. When you were on the stand the other day I asked you to ascertain when you ceased to send out reports to the several railroad companies showing total shipments, and in addition thereto the calculation showing the relationship thereof to what were called president's percentages. You replied you would ascertain that date and put it into the record. If you have that date, please state it.—A. For the month of May, 1903.

Q. Then I understand that since May, 1903, you have not shown on your reports to the various railroad companies what were called the presidents' percentages?—A. No, sir.

Q. How long before May, 1903, had these percentages been included in your report?—A. January, 1901.

Q. You mean you commenced to send out these reports in January, 1901?—A. Showing presidents' per cents for the month of January.

Q. Were such reports sent out with these facts shown prior to January, 1901?—A. No, sir.

Q. Have you a copy showing the form of the report in which the presidents' percentages were included?—A. Yes, sir.

Q. Please file it as Government Exhibit No. 7 to your deposition.—A. I do so. That is the specimen which gives the time of the last report on that form. That is one for May, 1903.

Q. And the ones sent out for the months preceding that were of substantially the same form, all of them?—A. Yes, sir.

Q. In these reports for May, 1903, in the report for May, 1903, Government Exhibit No. 7, under the heading "Tonnages based upon percentages," you show the total tons and then the per cent. What do you mean by "tonnages based upon percentages?"—A. Tonnages based on the so-called presidents' per cents.

Q. In the column called per cents you put down what are known as the presidents' per cents?—A. Yes, sir.

Q. You were asked when you ceased to include in your report the tonnage of the New York, Susquehanna and Western Railroad.—A. Yes, sir. I began to include these figures formerly reported for the New York, Susquehanna and Western road in those returned by the Erie Railroad in March, 1901.

Q. You also stated that you at one time reported the coal of the Delaware, Susquehanna and Schuylkill road separately, and thereafter stopped reporting in that form and included these figures in the totals for the Lehigh Valley Railroad Company?—A. Yes.

Q. When did you commence to report them in such totals?—A. They were reported as a separate item up to and including the month of December, 1906, and commencing with January, 1907, the tonnage was included in the Lehigh Valley's estimates. I think my testimony shows that we carried it to the close of the year to be able to make comparisons.

Q. How long have you been receiving from The Lehigh Coal and Navigation Company monthly statements of the amount of coal sold by them f. o. b. New York Harbor and the average price?—A. I can not answer that exactly. In fact, I have a very indefinite idea of the time.

Q. For several years past?—A. Yes, for several years past.

Q. And up to the present time?—A. I am not sure whether we are receiving them now or not. We do not make any use of them. I mean we do not include them in our compilation, but several years back The Lehigh Coal and Navigation Company asked for the average prices which we compiled, the monthly statements, and I asked them in return to send their figures to me, simply as a matter of information, to keep in touch with the situation, and I asked them to do that, and I assume they come in month by month, although very often I do not see them, because we do not use them in our compilation. It was merely a matter of an exchange arrangement with them.

Q. We asked you to furnish us a statement showing the average price for the several regions from 1900 down to date. If you have them, please supply them here.—A. Here they are, and they show the general average New York Harbor f. o. b. prices November, 1900, to September, 1908, inclusive.

(The statement is offered in evidence marked Government Exhibit No. 11.)

Q. You have put upon this statement last referred to the Wyoming region, the Lehigh region, and the Schuylkill region. In order to make it perfectly clear, is the Wyoming region the same thing fre-

quently referred to in the literature on this subject as the northern coal field?—A. Yes.

Q. And the Lehigh region, what does that include?—A. It includes the middle field, both the eastern and western end.

Q. Will you describe so that that it can be understood the relationship between the trade regions and the geological fields?—A. For trade purposes the district is divided into three regions, namely, the Wyoming, sometimes called the Lackawanna region, the Lehigh region, and the Schuylkill region; and for geographical and geological purposes into four fields or basins, namely, the northern field, the eastern middle field, the western middle field, and the southern field; the Wyoming region embracing the northern field, the Lehigh region the eastern middle field and the southern field east of Tamaqua, and the Schuylkill region the western middle field and the southern field west of Tamaqua. That is correct.

Q. I asked you to prepare a list of the parties whom you have been informed have contracts relating to the sale of coal based upon 65 per cent of tide-water prices. Have you prepared that list?—A. Yes, sir; I have, and present it here, and it is annexed as Government Exhibit No. 12. I have divided that according to regions.

Q. I asked you also to prepare a statement showing as accurately as practicable the amount of coal shipped to New York Harbor. A. I understood it was to be f. o. b. New York Harbor. I can only say that is an approximation, but in going over the figures I find that the tonnage included in the compilations which I make for the prices embraces about 75 per cent of the total coal shipped f. o. b. New York Harbor. That is a round figure, but it is substantially correct.

Q. What is the total?—A. It is between 12,000,000 and 13,000,000 tons, on an average. It is about one-fifth of the total production of anthracite coal; that is, of the total shipments of anthracite coal.

Q. The tonnage shipped f. o. b. New York Harbor by The Lehigh Coal and Navigation Company is not included in this 75 per cent?—A. No sir.

Q. What is the largest shipper of coal f. o. b. New York Harbor outside of the companies which report to you and whose averages you compile?—A. I would say The Lehigh Coal and Navigation Company, offhand, but I am not certain.

Q. Do you get the figures of the Susquehanna Coal Company's shipments to New York?—A. Do you mean the Susquehanna Coal Company of the Pennsylvania Railroad?

Q. Yes.—A. No, sir. It may be that we sometimes get the averages as a mere matter of information or exchange, but there is no arrangement for them to furnish them, nor did we, as far as I know, ever ask them to furnish them.

Q. Do you have anything to do with the settlement between that company and the companies of which it buys coal?—A. I do not catch exactly what you mean by that. Do you mean do I furnish them with the report of the f. o. b. prices?

Q. Yes.—A. Yes, sir.

Q. You furnish the Susquehanna Coal Company with the reports of the f. o. b. prices?—A. Yes.

Q. But the shipments of the Susquehanna Coal Company to tide are not included in these averages?—A. No, sir. They were furnished on request to the Susquehanna Coal Company.

Q. Do you know that the Susquehanna Coal Company purchased its coal from other producers upon the 65 per cent contract basis?—A. I do not.

Q. The Susquehanna Coal Company ships and sells coal at New York Harbor, does it not?—A. Yes, sir.

Q. Do you know the extent of its f. o. b. shipments there?—A. No, I do not. They are not so very large, though.

Q. For a number of years you have compiled a map of the anthracite coal regions, have you not?—A. Yes, sir.

Q. Have you published that map from time to time?—A. Yes.

Q. How long has that been going on?—A. We have made three or four editions of it at intervals of three or four years each.

Q. The last map was compiled and published as of what date?—A. As of January 1. That is, it was revised to January, 1908, the present year.

Q. And published since that date?—A. Yes.

Q. I show you here a printed copy of a map purporting to have been compiled and issued by the bureau of anthracite coal statistics, revised to January, 1908. Is that one of the maps which you have spoken of and which you have compiled and published?—A. Yes, sir.

Mr. McReynolds. That is presented as a part of the record and marked Government Exhibit No. 13.

Q. How did you obtain the information, and what care has been exercised in obtaining the information set down in this map?

Mr. Schaperkotter. That is objected to.

A. We take the sheets just as they are there and send them to every mine inspector in the State of Pennsylvania, in the anthracite region, and ask them to carefully look over the section with which they are familiar, and give us any corrections that they may be familiar with, or changes or alterations in the matter. We then send the same sheet in the same way to the engineering department of all the large companies, and quite a number of the small ones, and have their departments go over the map with respect not only to the location of the collieries, but with respect to any new spurs of roads or any changes in the situation in the region. Then from that and the information which we have to get from time to time ourselves about changes and corrections we verify and collate the data from the sources I have spoken about, and check one against the other. We check, for instance, the reports and changes as made by the engineering departments of the companies with the reports made by the mine inspectors, and if there is any apparent discrepancy we investigate that discrepancy and settle it before we finally issue the map.

Q. Then your endeavor is, as I understand you, through the best means of information which you have, to make this an accurate description of what it purports to represent?—A. Precisely.

Q. Up to the last of the year 1907?—A. Yes.

Q. Is this map regarded or has this map come to be generally accepted as authoritative as to the anthracite regions?

Mr. SCHAPERKOTTER. That is objected to.

A. Without any egotism, I believe I may say it has.

Q. Is it or not constantly used by parties interested in these sections for the purpose of locating sections and ascertaining other information there set out?—A. Yes.

Q. There are certain portions of this map which are shaded with a dark yellow, generally surrounded with a lighter yellow shading. What does the darkest shading indicate?—A. That is supposed, generally speaking, to indicate the ground actually underlaid with workable coal.

Q. What is indicated by the lighter shade?—A. The outcroppings; I mean the edges of the field, as it were—probably in some places unworkable seams.

Q. With the notation which seems to be here the light yellow refers to Pottsville conglomerate No. 12. What does that mean?—A. I can not answer that. The original of this map was published, I should say, twenty-odd years ago, in connection with some reports of the Pennsylvania geological survey, and they used certain technical descriptions which I am not familiar with. We simply continued on in the revisions of the map as it was issued.

Q. In the margin of this map there is compiled a list of the mines and washeries, with the names of operators, with their post-office addresses and railroad connections. I ask you whether or not your bureau has taken pains, by communicating with the people in charge and the owners of these various properties, to verify that information?—A. Yes.

Q. So far as you are able to state, is the information upon the map accurate as of the last of the year 1907?—A. Yes, sir.

Q. Were the changes which took place between June 1, 1907, and the last of December, 1907, when this map was compiled, in this region, material, or were they small?—A. No, sir; the changes were immaterial in that period.

Q. What other data did I ask you to produce, Mr. Ruley?—A. You asked me to bring down to date the statement showing the shipments of anthracite over the initial lines from January 1, 1901, which was referred to on my previous examination. Here it is.

Mr. MCREYNOLDS. This statement is put in evidence, marked Government Exhibit No. 14.

A. (Continued.) You also asked me to separate the figures in the statement showing the average New York Harbor f. o. b. prices of the coal companies reporting to me, so as to show the average prices of each company from each of the three trade regions. I have done that, and here is the statement.

Mr. McREYNOLDS. The statement is put in evidence, marked Government Exhibit No. 15.

Cross-examination by Mr. MOOT:

Q. This map, I infer from what you say, is a compiled map as distinguished from a map from actual surveys on the ground?—A. The original map was made from the actual surveys made on the ground, and it was published by the Pennsylvania geological survey back twenty-odd years ago.

Q. But this map is a compiled map, made on the basis of the Pennsylvania geological survey?—A. Yes, sir.

Q. And you have added to it changes from time to time, as you have stated, from these sources of information, until you have brought it in the condition of this one for 1908?—A. Yes. We have not changed the outlines of the fields in any way.

Q. The yellow, representing the Pottsville conglomerate, that you understand, as you stated to counsel, to be a portion of the field that does not contain seams of coal that are workable for one reason or another?—A. That has always been my understanding.

Q. Whether there is any coal at all in the conglomerate you do not know, geologically?—A. No, sir.

Q. You take that on the basis of the geological survey on which the map is founded?—A. Yes, sir.

Q. Counsel asked you about the individual shippers. If I remember correctly, you said the other day that you received information from about 400 of the individual shippers, or 400 people of one sort and another?—A. No; not people; collieries.

Q. About 400 collieries?—A. Yes; something less than 400.

Q. Are the names given on that map the names of the various people, according to your sources of information, that are interested in these collieries?—A. Yes.

Q. The collieries are all located as indicated, and the people interested in them are given on the map, according to your sources of information?—A. Yes.

Q. You have also furnished a list of the companies receiving f. o. b. prices under 65 per cent contracts. You said the other day you never saw one of these contracts in executed form. You got that impression from information received in some way that all these people have 65 per cent contracts?—A. They have, I assume, some sort of a contract. I do not know what it is.

Q. Those are the people asking you for your statistics on the basis of which wages are now paid under the strike award?—A. No.

Q. Who does ask you for your statistics?—A. They just ask for the average f. o. b. prices.

Q. And you are furnishing all these people with these average prices?—A. Yes.

Q. But further than the fact that in some way you have got this impression that they have a 65 per cent contract, you do not know?—A. No. I do not know what kind of contracts they have.

Q. Of this coal that comes to New York Harbor, some 12,000,000 tons, if I understand you correctly, or a little more—about 20 per cent of the total shipments—you say about 75 per cent, according to your information and opinion, is used here in Greater New York?—A. No.

Q. About 75 per cent is what?—A. 75 per cent of the total amount of f. o. b. coal is the basis upon which I prepared the f. o. b. prices.

Q. And about 25 per cent of the coal is not included in that basis of prices?—A. No.

Q. Do you know about how much of the coal is used here in Greater New York?—A. I find I made an estimate at one time that Brooklyn and New York—Greater New York, and the immediate vicinity—used in the neighborhood of 10,000,000 tons, but that is not all f. o. b. New York. Some of that coal is float coal.

Q. You mean what by float coal?—A. Coal for a delivered price in New York City. The cars are simply shunted right on floats and taken over there, instead of being free on board Jersey City.

Q. Can you give us any estimate of the amount of coal included in this f. o. b. coal in New York that in fact is sold here at f. o. b. prices and then goes to England or elsewhere by water or by rail?—A. You mean New England?

Q. Anywhere; I do not care where; that is not used up here in Greater New York?—A. There would not be any f. o. b. coal going to New England by rail.

Q. That is used up here?—A. If it is f. o. b. it would not go by rail. This is water coal.

Q. Of the coal that is handled here in New York Harbor have you any way of telling us about what percentage ultimately finds some destination other than Greater New York for its consumption?—A. I think I could give you that approximately. I can not now. The reason I say that is because it is rather a difficult matter to distinguish between the float coal and strictly f. o. b. coal.

Q. There is a considerable percentage, however, of the coal that comes to New York Harbor that ultimately is consumed at some other point?—A. Undoubtedly, a very large amount.

Q. And part of it moves to the points where it is consumed by water and some of it by rail?—A. Yes, sir.

Q. Of the 67,000,000 tons, substantially, that was produced last year, as I understood you, gathered by your tonnage figures, have you any way—I understand that does not include what is used at the mines or in that vicinity.—A. No, sir.

Q. And you estimate that at how much?—A. It runs approximately about 12 per cent.

Q. So that that would make the production of the anthracite mines last year about how many tons?—A. That would be one-eighth added to the tonnage. That would bring the total up in the neighborhood of 75,000,000 gross tons.

Q. Last year?—A. Yes, sir.

Q. That is an increase from about what tonnage when you began to take care of the statistics for the bureau after 1890?—A. About double.

Q. And, without going over your figures, has that been a comparatively steady increase, save in years of depression.—A. Not exactly. It seems to run in cycles. There is a steady increase, but not a steady increase every year. The weather conditions, for instance, will of course affect the matter of consumption.

Q. Illustrate.—A. Take some specific year?

Q. That is as good a way as any.—A. If I had the annual report which I make to the United States Survey, they have rather an exhaustive account of the variation of the tonnage in accordance with weather conditions. If I could put them in evidence I would very much prefer that to simply jumping at it.

Q. Suppose you have a long, severe winter, what effect would that have on the thing?—A. The lowering of the temperature of five degrees, when it happens to be down about we will say 30°, will make the coal trade boom. That is the best way I know of illustrating it.

Q. Of this production of coal, have you any way of telling us, say since the strike of 1902, about what proportion of the whole production, according to your information and figures that you have been giving here, is produced by so-called independents, treating The Lehigh Coal and Navigation Company as one of them?—A. Do you mean independent in the sense of not being under any contract whatever?

Q. Independent in the sense that there are none of these railroad companies, none of these companies that are called railway coal companies, independent, as far as your information goes, whether they are selling by contract or not, irrespective of contract?—A. I should say in the neighborhood of 25 per cent, although I would like to have the right to modify that if it is not accurate.

Q. The prices and the figures you have produced here to counsel, in these figures I observe that the prices even of the same company differ from time to time. For instance, here is the Lehigh Valley Coal Company, which produces coal in all three of these regions.—A. Yes.

Q. But I observe that, generally speaking, their prices are not always the same, but differ considerably in these different regions?—A. Yes, sir.

Q. On the same kind of coal, as egg or chestnut, can you tell why that is?—A. No; I do not know why, unless it is simply a different grade of coal or, rather, a demand for one grade in excess of the demand for another. I presume it is simply the result of trade conditions.

Q. Do you know whether the same sales agent sells the coal for The Lehigh Valley Coal Company whether it comes from one field or the other?—A. I believe it does.

Q. And you report the sales here as they are given to you?—A. Yes, sir.

Q. Do you know whether there is any difference in the character of the coal that comes from these various fields that would account at all for these differences in the prices?—A. There is a general difference in the character of anthracite coal. It runs from a soft, rather free-burning coal in the northern field into hard in certain parts of the Lehigh field, and again becoming softer in the southern field. The hardest grains of coal, generally speaking, come from the middle or Lehigh field. The free-burning coals come from the Wyoming and Schuylkill regions.

Q. I look at these figures again and I see a very large difference in the prices of the same sizes. I notice there is a much greater difference in the prices of the steam sizes than I see in the prepared sizes. For instance, taking the first page here, under buckwheat No. 1, I observe The Lehigh Valley Coal Company is $1.76, the Delaware and Lackawanna $1.97, the Pennsylvania Coal Company $2.21, the Hillside Company $2.10, the New York, Ontario and Western $2.20, The New York, Susquehanna and Western Coal Company $1.90; and I go down to the Lehigh field and find that The Lehigh Valley Coal Company is $1.81 for the same grade, Coxe Brothers $1.88; and in the Schuylkill region for the same grade I find The Philadelphia and Reading Coal and Iron Company $1.80, The Lehigh Valley Coal Company $1.71; and so I might go through the different steam sizes, showing a great difference in the price of these steam sizes reported to you. Do you know anything about the reason for that large difference compared to the difference in prepared sizes?—A. I simply know that, apart from the competition between the anthracite companies themselves on steam sizes, they are subject to competition on the outside from bituminous coal.

Q. That is all that you know?—A. That is all I know about it.

Q. I observe again when looking at the prices that very frequently the Delaware, Lackawanna and Western have higher prices for their prepared sizes than any other company in the northern field, and that Coxe Brothers Company have larger prices than anybody in the middle field. Do you know anything about why that is so?—A. I am rather afraid to give the reason. I may be jumped on by some of the other companies. Generally speaking the Delaware, Lackawanna and Western coal is a very high grade of coal and it is a very fine looking coal and finds a ready market. I will not say anything about the appearance of the other coal.

Q. How about Coxe Brothers & Co.?—A. The Coxe Brothers coal has always been well known, a well-known grade of Lehigh coal. They have a great many exclusive customers, people they have sold to year in and year out, and it would not make very much difference what the price was they always had a pretty good market for their product because it was considered an exceptionally good coal.

Q. Do you know a producer by the name of Markle?—A. Yes; they operate under the name of G. B. Markle & Co.

Q. Is that producer one of the producers that you figure in among the so-called independents?—A. No, sir.

Q. But you get their reports, I suppose?—A. Yes; we get their tonnage reports.

Q. They produce about how much, according to your recollection?—A. They must produce in the neighborhood of 1,000,000 tons.

Q. Markle & Co. operate in the Lehigh field?—A. Yes.

Q. What kind of coal do they produce?—A. It is a very high grade of coal.

Q. Do you know anything about the prices they get? Do their reports show anything about the prices they get as to the prices generally, whether they are higher or lower?—A. Generally speaking, the Markles' prices are higher than the average market prices.

Q. Do you know within what range these figures run?—A. I judge 25 cents a ton more anyway.

Q. So far as you know and your information goes, would you give the same reason for these prices being higher that you have given in the case of Coxe Brothers?—A. Yes, sir.

Q. As a statistician, looking at this tonnage which has practically doubled since 1890, has anything come under your observation one way or the other in these reports that you study and these reports in turn that you make yourself, showing one way or the other as to whether there has been any change in the relation of supply and demand in the market as between 1890 and the present time?—A. Decidedly.

Q. What change?—A. The demand for anthracite coal at the present time and for the last several years has, generally speaking, exceeded the supply, and a good many times has been ahead of the supply.

Q. What times for instance?—A. Especially times when the production had been curtailed by strikes, or by bad weather preventing the company from getting shipments forward. In the last several years there have been quite a number of instances where certain sections of the country have been absolutely bare of anthracite coal, and I should say that generally speaking the average demand for anthracite coal at the present time throughout the anthracite-burning territory on domestic sizes fully equals the supply, and it requires a very little change in temperature to make the demand even greater than the supply.

Q. Taking the last year we had the culmination of the so-called panic, the last spasm. Now, according to your observation of the reports that came in and the figures that you studied, how has that panic affected one way or the other, if at all, the anthracite market, either for steam sizes or for prepared sizes?—A. The year 1907 was by several million tons larger than any previous year in the history of the anthracite trade.

Q. You mean the calendar year 1907?—A. Yes; the calendar year 1907. If my memory serves me right, it was in excess of any previous year by about 6,000,000 tons. I mean the sales. That is a pretty large increase in one year, 6,000,000 tons.

Q. Your prices that you gave there, do they cover all the different varieties of anthracite coal produced and sold?—A. Yes, sir.

Q. What varieties do you cover?—A. There is a uniform grade, in a way. That is, I simply include what is known as "free-burning white ash" in making up the prices.

Q. What other varieties are there that you know from information you received that you do not include?—A. The hard white ash, and there is a red-ash coal. In the Schuylkill field there is the Lykens Valley and the Lorberry and the Shamokin coal, all varying in grade and price.

Q. Give us an idea of how the prices on these various varieties vary as compared with white ash?—A. Generally speaking, they are all higher.

Q. Generally speaking, all these varieties are higher than white ash?—A. Yes.

Q. About what is the difference?—A. I should say they would range anywhere in the same market from 10 cents a ton, and some grades run pretty near as high as 50 cents. I think it would reach as high as 50.

Q. On what variety, for instance?—A. I think the Lykens Valley commands at least 50 cents a ton higher than the ordinary free-burning white ash of the Schuylkill region. I simply say that from memory.

Q. The other varieties, like the Lykens Valley, are mainly produced in which field?—A. The Lykens Valley comes from the southern field. The Lorberry comes from the Schuylkill field. There is a hard white-ash coal in the middle field, and some little red-ash coal, I believe, in the middle field.

Q. Do these varieties bring these larger prices because they are really bettter than the white ash, on which your prices are based, or simply because in some cases people have some notion about liking that better for some reason?—A. I do not know, but I should say that the latter was the reason. Certain sections of the country have been supplied wih certain grades of coal, and they become used to that grade. There are some places you could not sell a very hard Lehigh coal, because the people have been using and are used to burning a free-burning coal.

Q. Like the Lykens Valley?—A. Yes.

Q. So that that has its effect on the coal prices?—A. Undoubtedly.

Q. You gave some figures the other day on the geographical distribution. Without going into the detail of those figures, where is the bulk of the anthracite coal sold?—A. Along the north Atlantic seaboard.

Q. In what States?—A. The New England States, and Pennsylvania, New York, and New Jersey.

Q. Where is the bulk of it sold?—A. Eighty per cent is sold in the New England States and the three others I mentioned.

Q. Of course the New England States, as compared with New York, New Jersey and Pennsylvania, take a very much smaller

part?—A. About 15 per cent to the New England States, I suppose, and about 65 per cent to Pennsylvania, New York, and New Jersey. The 65 per cent does not include sales at the mines or colliery consumption—that is coal that actually starts from the mine in the cars.

Q. That is shipped coal?—A. Yes.

Q. Assume that the coal consumed at the mine and sold in the immediate locality was also included, that would raise the percentage somewhat more?—A. Very materially.

Q. So that this anthracite-coal business to the extent of these percentages you have given might be called a local business?—A. Yes; since the time I have been compiling the statistics there has not been a proportionate increase in per cents of the tonnage consumed outside of the States that I mentioned. The tonnage consumed in those States has actually increased, but not in the same ratio as it has in New England, Pennsylvania, New York, and New Jersey.

By Mr. SCHAPERKÖTTER:

Q. What is your experience with the anthracite-coal situation by years? How many years have you had knowledge of it?—A. Since about 1890.

By Mr. MOOT:

Q. In these figures of this anthracite production and these shipments which you furnish in your reports there appear to be variations from the so-called presidents' percentages, and the tonnage in the statement you produced to Mr. McReynolds was figured out on the basis of the president's percentage. That tonnage figured out on the basis of the president's percentage I take it is simply an imaginary tonnage obtained by taking the president's percentage and applying it to the actual tonnage produced?—A. To the total actual tonnage.

By Judge CAMPBELL:

Q. It does not represent in actuality the shipments?—A. No, sir.

By Mr. MOOT:

Q. You said the other day that you got the presidents' percentages from the press, if I understood you correctly, or trade papers.—A. I said they were published there, and that is the only source of information I had in mind.

Q. Did you ever talk with any president about the thing one way or the other?—A. No, sir.

Q. Have you since looked to see if you could find what it was that you had in mind that was published from which you got that?—A. I looked over the back files of the "Coal Trade Annual" which is published by Mr. Saward. It is an annual compilation of the condition of the trade throughout the year.

Q. Mr. Saward publishes a coal-trade journal the same as you?—A. He publishes a coal-trade journal.

Q. And has for how many years?—A. Thirty-five years, I guess.

Q. That is a coal-trade paper that covers both the bituminous and anthracite coal interests?—A. Yes.

Q. Is it the only one?—A. No, sir.

Q. Is it one of large circulation?—A. I should say that it had a pretty general circulation. I see it in nearly every coal office that I go in, so I assume it is pretty generally used.

Q. Can you turn me to the first one of these trade journals that came under your eye, or the compilation in any book that came under your eye, mentioning percentages as applied to the coal trade?—A. I have several copies of that book here.

Q. What is the first one your have got there?—A. I have them back as far as 1890. There is a general account there of the anthracite business.

Q. On page 10 of the annual for 1890 I find the statement that the tables compiled by Prof. P. W. Sheafer for the years 1820 to 1868, inclusive, and since 1868 by Mr. John H. Jones, accountant of the anthracite transporting companies, have been adopted as the most correct so far as a report of the output is concerned. Were you a witness before the anthracite strike commission?—A. Yes.

Q. They made up some tables as the basis of their report. Do you know where they go their figures?—A. They got them from the bureau.

Q. You furnished these figures to the commission from these sources?—A. Yes, sir.

Q. That is correct, is it?—A. Yes, sir; as nearly as we know.

Q. I find right under some of the statistics of the production for the years 1886, 1887, 1888, and 1889 this statement: "Taking up the question of monthly tonnages, which is always an interesting one, it is found that the bulk of the business is done in a very few months; for instance, in four months in 1888 there were 16,000,000 tons shipped to market," and the tonnage for the year being as given here 38,145,000 tons. Has there been any difference in that respect, in the way of tonnage, in the way in which the tonnage is distributed now over the year as compared with the way the business was arranged then?—A. Yes; there is not as great a proportion of the business done in so-called winter months now as at that time.

Q. Is there any reason why that is so now?—A. There seems to be a better distribution of it, and apparently more stocking of coal by dealers taking it in the early part of the year.

Q. When the weather is good and the price is low the dealer will stock up with coal now and distribute it through these months as well as the colder months when the people have to burn it?—A. Yes.

Q. The lower price induces the dealer to stock up?—A. Yes, sir.

Q. I find below, on page 11, "reducing the business done by each of the initial anthracite coal carriers to the basis of percentages, one may find that there are some interesting features attached thereto. Taking the years 1886–1888 (the latter being the latest official figures available) one finds that the Reading Company did an average of 20.55 per cent, the Lehigh Valley 17.78 per cent, the Central Railroad of New Jersey 14.91 per cent, the Delaware Lackawanna and Western 17.36 per cent, the Delaware and Hudson 11.29 per cent,

the Pennsylvania Railroad 11.22 per cent, the Pennsylvania Coal Company 4.55 per cent, and the 'Erie' 2.27 per cent; this fairly represents the 'ability to produce' of the several interests on collieries tributary thereto, whether the total output be 40,000,000 of tons annually or less," Are you able to find anything earlier than that in any publication on the percentage basis?—A. I judge I could.

Q. That is the earliest you did find?—A. The earliest I could find in the files.

Q. In other words, for a long time the statisticians had been dealing with tonnages on the percentage basis?—A. Yes.

Q. What is the next one you have?—A. 1891. In 1896 there is quite an extensive report.

Q. Is this report of 1896 one of the reports you had in mind the other day when you spoke of these presidents' percentages being published?—A. Yes, sir.

Q. Do you know whether the presidents' percentages idea was published in the journal itself as it comes out from time to time before it was published in this compilation for the year?—A. That was not published until some little time along in the year. I think the other information was published in the current journals and newspapers early in the year, but the information which I find there is substantially the information which I had in mind when I stated it appeared in the press at that time. It was a matter of general discussion.

Q. Without giving the monthly production and the shipments by the anthracite companies, and the production in each district, with its percentages, and the actual percentages of the whole shipments for the years 1890 to 1895, each year separately for the P. and R., the L. V., the C. R. R. of N. J., the D., L. and W., the D. and H., the P. R. R., the P. C. Co., the Erie, the O. and W., and the D. S. and S., on page 21—are these figures which you furnished originally to these publications yourself?—A. Yes.

Q. You recognize these figures?—A. I do not say I furnished the per cents. I furnished the tonnages on which the percentages are based.

Q. I find this statement, "There was held on the 23d of January, 1896, a meeting of the representatives of the several anthracite producing and carrying companies in order to come to some agreement in regard to trade conditions and its improvement. According to the figures presented at the meeting the tonnage of the different companies in 1895, as compared with 1894, is as follows: "Then follows the statements of the companies and the production for 1895, and the per cent for 1894, and the changes of increase or decrease in percentages, the largest being a change of 1.45 per cent. This was referred to a committee to adjust, which a week later brought in a report recommending that for the period commencing February 1, 1896, and ending March 31, 1897, the following percentages should be adopted: Philadelphia and Reading 20.50, Lehigh Valley 15.65, Delaware, Lackawanna and Western 13.35, Central Railroad of

New Jersey 11.70, Pennsylvania Railroad 11.40, Delaware and Hudson Canal Company 9,60, Erie Railroad 4, Pennsylvania Coal Company 4, Delaware, Susquehanna and Schuylkill 3.50, New York, Susquehanna and Western 3.20, New York, Ontario and Western 3.10." Now, are these percentages and these statements the percentages and statements you had in mind about seeing them in print in the trade journals?—A. Yes.

Q. Do you know of any earlier publication of the presidents' percentages except in the journal of which this is a compilation?—A. No, sir; I do not.

Q. And was it from these sources, or the original journal of which this is a compilation, from which you got the compilation from which you made your percentage reports and figures?—A. Yes.

Q. Right following that I find this: "At a meeting of the representatives of the anthracite transporting interests, held in New York March 28, 1895, Mr. E. P. Wilbur, president of the Lehigh Valley Railroad Company, offered the following resolution: 'That the percentage of shipments of 1894, as shown by the statistician's statement, be adopted as the basis of distribution among the transporting companies, with such modification as may be found necessary to bring all the collieries of the anthracite region into harmonious and equitable relations, considering changes in the status of collieries, the equalization of time worked by them, abandonment of collieries, new collieries, readjustment of chargeable tonnage, and any other claims which may be presented by any or all interests concerned, which modifications shall be made by a commission, which shall declare its amended schedule of distribution within thirty days from this date, which, when adopted, shall be effective for one year from April 1, 1895.' This was not unanimously agreed to and therefore failed of adoption, and the meeting adjourned subject to call." Was that some of the matter you had in mind also?—A. Yes, sir.

Q. Following that subject further I find this: "Pursuant to that a meeting was held April 5, 1895. No result having been reached, Mr. Thompson, of the Pennsylvania Railroad, moved and Mr. Wilbur seconded the following resolution: 'That a committee of five presidents be selected to submit to an adjourned meeting the names of three arbitrators, and the procedure of the arbitration and the subject-matters be submitted to them.' Mr. Harris, of the Philadelphia and Reading Company, stated that he would vote for the resolution with the understanding that the position of the Philadelphia and Reading having already been defined, he would nevertheless recommend the receivers to consider the question brought up by Mr. Thompson's resolution, and that if they should decline to proceed under the resolution he would notify the chairman of the committee. The meeting appointed as a committee Messrs. Olyphant, Harris, Wilbur, Sloan, and Roberts, and adjourned subject to the call of the chairman of the committee. On April 10 the following letter was received from Mr. Olyphant, chairman of that committee: 'Dear Sir: I send you a copy of a letter received from President Harris to-day. It

speaks for itself.' I have written to him: 'As this is a declination on your part to proceed under the resolution appointing the committee, it only remains for me to notify the members thereof that it is so dissolved.' No further negotiations were had." Was that also a part of what you had in mind?—A. Yes, sir; that was common knowledge and talk at that time.

Q. And made public through the press and these trade publications?—A. Yes, sir.

Q. And this publication, publications like this, publish in that form or in some form, along with other publications, these statistics that you furnish them for that purpose?—A. Yes.

Q. You furnish these statistics to them in the same form which you furnished them to the presidents or whoever the officials may be of these coal-carrying companies?—A. Yes.

Q. This journal being one of them?—A. Yes, sir.

Q. I call your attention to the statistics published in this journal for the year 1908, giving the total tonnage—that is, the gross tonnage—of the anthracite trade from 1903 to 1907, and ask you if these are the figures that you furnished to that journal, if you can tell by looking over them, at pages 4 and 5?—A. I judge they are the figures. They look about right.

Q. And the aggregate, according to these figures, of the anthracite tonnage for 1907 is there given as what?—A. 76,935,464. That is reduced to net tons there. That makes the difference.

Q. The difference between 2,000 and 2,240?—A. Yes.

Q. I now call your attention to the figures for the coal trade, anthracite free burning coal, New York market, on all the various prepared and other sizes, from January to December, showing the range of prices. Look at these and see if you can tell whether these are the figures, in substance, furnished by you.—A. No, sir; these are evidently circular prices.

Q. I now call your attention to the figures on page 37. Are you able to identify those figures?—A. The totals for the year are apparently correct. You can prove it right there from the files of reports if you look at them.

By Mr. McREYNOLDS:

Q. In other words, these figures are in the reports you have given us?—A. Yes.

By Mr. MOOT:

Q. In short, they print in these journals year by year and month by month the total tonnage, so that anybody can get at it who wants to know?—A. Not only the total, but they give it by companies. They just give a copy of this report.

Q. And for how many years have these journals been giving the details of these anthracite coal statistics, the totals for the month, and the totals of each company and all that, in this detailed way, according to your recollection and observation?—A. Ever since I can remember, ever since I have been connected with the bureau, since 1890.

Redirect examination by Mr. McREYNOLDS:

Q. Do you have any way of knowing what the capacity of a given colliery is if worked to the utmost that it could be?—A. No sir; I have not.

Q. Do you know whether or not the collieries throughout the anthracite region do produce as much coal as they could actually take out?—A. In the last several years they have been working, I should say, up to their utmost capacity.

Q. Every one of them?—A. In 1907, for instance, I think every mine mined every ton of coal they could mine and get to market.

Q. Prior to that time was there not some sort of an understanding existing between them that each one should operate only to a certain per cent of the capacity at times?—A. If there was there was no evidence of it.

Q. You do not know it and did not?—A. No; the tonnage would not seem to indicate it.

Q. You think that these mines during 1907 have produced as much coal as they could?—A. I do not believe they could have gotten out a ton more in 1907 than they did get out. If they could they would have done it.

Q. Because there was a demand for it?—A. Yes.

Q. You stated a while ago that the average prices which you compiled, copies of which you have given us here, are based upon the sales of free-burning ash?—A. Yes, sir.

Q. What proportion of the whole coal that comes to New York is free-burning white ash, that comes to the tide at New York Harbor?—A. Probably 75 or 80 per cent.

Q. And the remaining 20 or 25 per cent consists of the different varieties, what we might call fancy varieties or special grades?—A. Yes, sir.

Q. In the totals that you make up of the coal that comes to tide, do you include these special grades or only the free-burning ash?—A. Are you speaking of tonnage?

Q. I am speaking of the figures that you make up the tonnage and average from.—A. Are you speaking of the tonnages or in respect to prices?

Q. Yes.—A. We do not bother with the special grades of coal at all. The average are made on the free-burning white-ash coal.

Q. So that the totals of the special grades are not sent in to you?—A. No; they are not sent in with respect to prices. We get the total tonnages to be able to find out the total amount of coal coming f. o. b. New York Harbor, approximately, but not with respect to prices.

Q. So that your average prices upon which the settlements are made on the 65 per cent contracts are based upon sales of free burning white ash coal alone?—A. Yes.

Q. And in these averages are not included the prices of these special grades?—A. No, sir.

SPOTS ON P

Q. Suppose a certain colliery produces one special grade and has a 65 per cent contract, does he get the 65 per cent free burning white ash price?—A. I do not know about that.

Q. Is there a controlling and well-defined difference in price between these special grades and free-burning white ash?—A. I should not say that; no, sir. There is a difference in price, but it is a varying say that; no, sir. There is a difference in price, but it is a varying difference.

Q. It may be 25 or 30 cents?—A. Yes.

Q. But the variation is within comparatively narrow limits?—A. They vary at different times of the year.

Q. You are the statistician who has been agreed upon under the 65 per cent contract, are you not?—A. Yes.

Q. You take no notice, in sending out your averages for settlement under the 65 per cent contract, whether the colliery produces free-burning white-ash coal or one of the special grades?—A. So far as I know all the companies to whom I send these reports produced free-burning white-ash coal, and I do not know of any case other where we send them. There may be a case or so, but I do not know it as such.

Q. Most all of these special grades are produced by companies who report to you and companies which sell upon the 65 per cent basis?—A. I do not know that they are produced by companies that report to me; no, sir. Take the producers I mentioned, the Lykens Valley and Lorberry; they are bought by The Philadelphia Coal and Iron Company.

Q. And the other special grades, what were they?—A. The Lehigh Valley has some special-grade coal. I do not recall just what it is or what colliery it is from, but I know they have some, and I think the Lehigh and Wilkes-Barre have a little. They have some red-ash coal which they do not report to me.

Q. How about the Delaware and Lackawanna Railroad?—A. The Delaware, Lackawanna and Western is all free-burning white-ash coal.

Q. I understand you to say that this publication, the "Coal Trade Annual," is regarded as an authoritative publication?—A. Yes.

Q. And many figures and statements contained in this publication are derived from you?—A. Yes.

Q. And others from an authentic source?—A. Yes.

Q. Some things were read from the report of 1896, and you stated that they were the things you had in mind at the time. I read you from the report of 1896, on page 26: "The individual interest represents considerable tonnage; it is claimed to be something very nearly 17,000,000 annually. A large portion of this coal, particularly that mined in the Lehigh and Wyoming districts, is sold to the carrying companies on the basis of 60 per cent of the tide-water selling price net at the mines. Others of the individuals, while they sell the coal themselves, are subject only to a transportation rate equal to 40 per cent of the tide-water price. There is an association of these opera-

tors known as the "Anthracite Coal Operators' Association," which has been organized to look after the interests of the individual producer of anthracite. Under the low prices ruling last year the net result to the individual who had not the opportunity to make a profit out of transportation was but a poor one, and during the very low prices of the summer many of them shut down for the time being." Was that part of the information you had at the time? I am reading from the annual trade publication in 1896.—A. I have no doubt I had that information at the time, or saw it at the time.

Q. That was true, was it, as you now understand?—A. I judge that was probably correct, or near correct.

Q. How much coal is now being produced by what were designated here as the "individual interests?"—A. I testified here that I thought it was about 25 per cent.

Q. What per cent was that of the total in 1896?—A. It must have been about 35 per cent of the total at that time.

Q. The percentage of the individual interest has materially decreased since 1896?—A. Yes.

Q. For a long time prior to 1901 these percentage contracts were based upon 60 per cent, were they not?—A. I had nothing to do with that.

Q. And that was changed to 65 per cent basis in 1901, was it not?

Mr. SCHAPERKOTTER. I object. The witness stated he has nothing to do with that, he knows nothing about it, and I enter my objection fully to the whole testimony in regard to the 65 per cent contracts, so far as the information is obtained from this witness, who knows nothing at all about it.

Q. I read you further from this coal-trade journal for 1896, on page 24, as follows: "The report of The Philadelphia and Reading Coal and Iron Company says on the same topic: 'The company's coal business resulted in a loss of $699,809.21, being 8.1 cents per ton of coal mined, whereas the business of 1894 showed a profit of $268,552.89, or 3.3 cents per ton; so that the result for 1895 was 11.4 cents per ton worse than in the previous year. The comparative loss was caused by the low prices realized for coal, which, with the exception of the year 1886, were less than those of any previous year since 1879. While the business was a losing one for the coal and iron company, this loss was more than made up by the gain to the railroad company from the additional tonnage produced, which was carried at freight rates which yielded a profit." Was that part of the information which you had?

Mr. SCHAPERKOTTER. I object to Mr. Ruley making any answer at all in reply to that question.

A. I judge I knew all that information at the time.

Q. I will read you further from this same report of the coal trade for 1896 from which Judge Moot has been reading, at the bottom of page 24: "The sales agents decided to restore the circular price at Buffalo and Chicago, which had been cut somewhat. These prices are: Buffalo (gross tons) $4.15 for broken and $4.40 for other sizes;

Chicago (net tors), $5.25 for broken and $5.50 for other sizes. Chicago prices apply also to business from Lake Michigan and Lake Superior ports." Is that part of the information you had at this time?—A. I had that in my files.

Q. What did you understand when it said: "The sales agents decided to restore the circular prices?"—A. If I recall it properly, any statement of that kind made at the time, about the restoration of prices, made me smile.

Q. Why did you smile when you read about the sales agents?—A. Because of the condition of the prices themselves. Of course, I did not know anything about what the sales agents did. What I had was that report.

By Mr. SCHAPERKOTTER:

Q. You really do not know anything about it.

By Mr. MCREYNOLDS:

Q. What did you understand was the meaning of sales agents in that connection?

By Mr. SCHAPERKOTTER:

Q. You really do not know anything about it?—A. No; I never attended a meeting, and of my own information I do not know that a meeting was ever held.

By Mr. MCREYNOLDS:

Q. What was your understanding of what was meant by the term "sales agents" in the quotation I have just read you from this coal-trade journal?—A. I do not know. That is a long time ago to ask me my understanding, what it was at that time, as to some statement which I saw and which I really knew nothing about. I never attended a meeting of the sales agents, and I do not know where they were held or anything about them.

Q. You understood they were being held and were fixing prices, did you not?

Mr. SCHAPERKOTTER. That is objected to. You must rely upon your own absolute knowledge.

Mr. MOOT. I object on the ground that I did not ask the witness what he understood. I asked him for his recollection as to the information which he had, and I object on the ground that what the witness understood is no proof of any fact.

By Mr. MCREYNOLDS:

Q. It was a part of your information at this time that these sales agents were holding meetings, was it not?—A. I saw the statements made. I had no positive knowledge of any kind that they were being held. In fact, I might add that I was not interested in any way at all at that time with the prices, as far as that is concerned. It was a question of tonnage.

Q. There was pretty fierce competition going on about 1895 and 1896 between the various producers of anthracite coal, was there not?—A. My recollection is that 1895 was a year of very large pro-

duction compared with the other years at that time, and I assume that there was considerable competition in the sale of coal.

Q. Don't you know there was?—A. As far as I know, there always has been.

Q. I read you from the same coal-trade journal for the year 1907, on page 39, as follows: "In addition to the individual operators selling coal under contract to the railroads, there are 22 who do not sell direct to the railroads, and these control a tonnage of about 2,500,000 tons, and there are also a few who sell coal locally direct to consumers, and the tonnage of these amounts to upwards of 100,000 tons." Is that part of the information you have on this situation?—A. That does not sound to me like it was correct. I do not know.

By Mr. SCHAFFERKOTTER:

Q. As a matter of fact you do not know?—A. No; I have never verified these figures.

By Mr. MCREYNOLDS:

Q. I understand you to say that the information published in this coal-trade journal is generally regarded as accurate?

Mr. SCHAFFERKOTTER. That is objected to.

Mr. WARREN. I also object to that portion as incompetent and absurd.

Q. I read you from the coal-trade journal of 1907, page 39: "In addition to the operators who sell to the railroad companies and to those who sell direct there are a considerable number who sell through their recognized agents. The operations of the independent anthracite operators, particularly those who sell their products direct to dealers or consumers, not sending their coal to any agency or middle house or disposing of it to the large companies, have frequently been a source of interested attention on the part of the trade. The number of these independent shippers has gradually become smaller in the last few years. Aside from a few conspicuously large concerns among the 'individuals' the tonnage sold direct is quite small, and we think it will be well to bear in mind this fact, when, as sometimes happens, the individual producers indulge in an unwonted degree of activity. By the most liberal interpretation, only about 2,500,000 tons are at command of the independents shipping direct, and considerably more than half of this tonnage is in control of four or five shippers. With few exceptions, the direct selling anthracite operators are now a decidedly small factor." Is what I have just read a part of the information which you had during the time you were compiling these statistics as the head of the anthracite bureau?

Mr. WARREN. That is objected to, as there is no proof as to who compiled this, and it is improper under any rules of equity pleading or evidence to undertake to read it and call it a question. The witness not having said that he ever compiled this that has now been read to him by counsel, the question is manifestly improper and incompetent, at any rate so far as binding my client is concerned.

Mr. MOOT. I object to this line of examination on the ground that it is not a competent redirect examination. I asked the witness to identify certain statistics; I asked him with reference to whether certain things I read to him were the information he had in mind in testifying in answer to counsel's questions the other day, and these two classes of testimony covered all I asked him, except generally as to what this journal was in which these things were that I called the witness's attention to. Counsel is now examining the witness along the line of what he understands to be the information he had, without disclosing the source and whether it is competent or incompetent, and I object to it as improper as well as incompetent.

Judge CAMPBELL. I join in making the general objection as to the irrelevancy and incompetency of this class of testimony.

Mr. SCHAPERKOTTER. I also object to it.

A. I suppose I had that book on file in the office. I may have seen it. I do not recall. I do not remember that I saw it.

Q. On page 118 of this coal trade journal for 1907, pages 118 to 119, there is a statement concerning the extent of the anthracite resources. Look at it and see if you compiled those statistics.—A. No, sir.

Q. Have you ever compiled any statistics showing the ownership of the unmined coal area in the Pennsylvania anthracite region—anthracite areas?—A. No.

Q. Do you know of any such compilation?—A. Yes; I have seen a compilation that was made.

Q. By whom?—A. I am not sure who made it. I think it appears in the Bond Record years ago.

Q. Do you know who made it up?—A. No, sir; I do not recall. I made a statement to the anthracite strike commission of the unmined anthracite which was based upon figures prepared by D. W. Smith, but it had no reference, his figures or mine, to individual companies. It simply took the regions themselves, and did not pretend to be any more than a general estimate of the unmined coal in each region.

Q. These figures that you compiled, does that mean tons of 2,000 pounds or 2,240 pounds?—A. 2,240.

Q. And generally are statistics with reference to anthracite coal understood to be long tons, 2,240?—A. Yes; almost exclusively.

Recross-examination by Mr. MOOT:

Q. Have you made lately any statement showing the variations from these so-called presidents' percentages by these various coal companies in which these carriers are interested?—A. I have not brought that statement to date. I recall the statement you speak of.

Q. Can you have a statement made up bringing it down to the same time of Mr. McReynolds' figures, showing how these variations are figured out?—A. Yes.

Q. On the same basis?—A. Yes.

It is understood by counsel that any witness may be recalled by either side if they shall find it expedient.

(Adjourned until Friday, October 16, 1908, at 10.30 a. m.)

Met pursuant to adjournment at room 47, Post-Office Building, New York, N. Y., on Friday, October 16, 1908, at 10.30 a. m.

Present: The Examiner; James C. McReynolds, esq., and G. Carroll Todd, esq., for the United States; and Adelbert Moot, esq., J. D. Campbell, esq., Everett Warren, esq., William S. Opdyke, esq., J. F. Schaperkotter, esq., Robert W. de Forest, esq., J. L. Seager, esq., and W. S. Jenney, esq., for various defendants.

PHILADELPHIA AND READING RAILWAY COMPANY—PHILADELPHIA AND READING COAL AND IRON COMPANY.

The statements marked Government Exhibits Nos. 16 to 37, inclusive, were presented by counsel in response to subpœnas duces tecum calling for the same, duly issued and served upon W. R. Taylor, secretary of the Reading Company and of the Philadelphia and Reading Railway Company, and on W. G. Brown, secretary of The Philadelphia and Reading Coal and Iron Company. Counsel for these companies admit that said statements were compiled from the books and records of the companies named therein, and may be treated in all respects as if produced by said officers before the examiner in obedience to the subpœnas and introduced in evidence by the Government. The right is reserved by counsel to object to any matter contained in said statements because irrelevant and immaterial, or incompetent as to substance.

Government Exhibit No. 16 shows the amount of capital stock of the Reading Company outstanding on June 12, 1907, and September 16, 1908, and certain of the holders of said stock, etc.

Government Exhibit No. 17 shows the names of the officers and directors of the Reading Company, as of June 12, 1907, and September 16, 1908, etc.

Government Exhibit No. 18 shows the capital stock of the Philadelphia and Reading Railway Company outstanding on June 12, 1907, and September 16, 1908, etc.

Government Exhibit No. 19 shows the names of the officers and directors of the Philadelphia and Reading Railway Company, as of June 12, 1907, and September 16, 1908, etc.

Government Exhibit No. 20 is a statement showing the total amount of anthracite transported by the Philadelphia and Reading Railway Company to New York Harbor points f. o. b., in the calendar years 1900 to 1907, inclusive.

Government Exhibit No. 21 shows the total freight tonnage of the Philadelphia and Reading Railway Company in 1907, etc.

Government Exhibit No. 22 is a list of the collieries and washeries located on the Philadelphia and Reading Railway Company's lines.

Government Exhibit No. 23 is a list of the stockholders, and the date the same was acquired, of The Philadelphia and Reading Coal and Iron Company, and also a list of the officers and directors of that company, etc.

Government Exhibit No. 24 is a list of the stockholders and the date the stock was acquired, of the Preston Coal and Improvement Company, together with a list of its officers and directors, etc.

Government Exhibit No. 25 is a list of the stockholders and the date the stock was acquired, of the Tremont Coal Company, and also a list of the officers and directors, and so forth.

Government Exhibit No. 26 is a list of the stockholders of the Mammoth Vein Coal and Iron Company, with the officers and directors, and so forth.

Government Exhibit No. 27 is a list of the stockholders of the Locust Gap Improvement Company, and so forth.

Government Exhibit No. 28 is a list of the stockholders of the Delaware Coal Company, and so forth.

Government Exhibit No. 29 is a list of the stockholders of the Fulton Coal Company, and so forth.

Government Exhibit No. 30 is a statement of the total number of acres of land in the anthracite-producing area of Pennsylvania owned by The Philadelphia and Reading Coal and Iron Company and other companies, and so forth.

Government Exhibit No. 31 is a statement of the date, amount, and general location of the acquisitions of coal land by purchase by The Philadelphia and Reading Coal and Iron Company since 1896, and so forth.

Government Exhibit No. 32 is a statement of the date, amount, and general location of the acquisitions of coal land by lease by The Philadelphia and Reading Coal and Iron Company since 1896, and so forth.

Government Exhibit No. 33 shows the number of acres of land leased and subleased by The Philadelphia and Reading Coal and Iron Company to other companies, and so forth.

Government Exhibit No. 34 shows the names of the producers who have engaged to sell the output of their collieries to The Philadelphia and Reading Coal and Iron Company under the so-called 65 per cent contracts, and also the tonnage purchased from other producers not under contract, and so forth.

Government Exhibit No. 35 is a statement of the anthracite coal (long tons) purchased from coal operators by The Philadelphia and Reading Coal and Iron Company, from November 1 to May 1, 1908, under so-called 65 per cent contracts, and so forth.

Government Exhibit No. 36 is a statement of long tons of anthracite purchased by The Philadelphia and Reading Coal and Iron Company, from November 1 to May 1, 1908, under 65 per cent contracts, and shipped to New York Harbor points to be put on board vessels, and so forth.

Government Exhibit No. 37 is a statement of total tonnage, in sizes, of anthracite coal shipped to New York Harbor each month, from November 1, 1908, by The Philadelphia and Reading Coal and Iron Company, and so forth.

CENTRAL R. R. CO. OF N. J.—LEHIGH & WILKES-BARRE COAL CO.

The statements marked Government Exhibits Nos. 38 to 51, inclusive, were presented by counsel in response to subpœnas duces tecum calling for the same, duly issued and served upon G. O. Waterman, secretary of The Central Railroad Company of New Jersey and also secretary of The Lehigh and Wilkes-Barre Coal Company. Counsel for these companies admit that said statements were compiled from the books and records of the companies named therein and may be treated in all respects as if produced by said officer before the examiner in obedience to the subpœnas and introduced in evidence by the Government; and the right is reserved by counsel to object to any matter contained in said statements because irrelevant, immaterial, and incompetent as to substance.

Government Exhibit No. 38 shows the amount of capital stock of The Central Railroad of New Jersey outstanding June 12, 1907, and September 22, 1908, together with the names in which certain stock appears on the books, etc.

Government Exhibit No. 39 shows the directors of The Central Railroad of New Jersey as of June 12, 1907, and September 29, 1908, etc.

Government Exhibit No. 40 shows the total amount of anthracite coal transported for all shippers to New York Harbor f. o. b., by The Central Railroad, for the calendar years 1900 to 1907, inclusive.

Government Exhibit No. 41 shows the tonnage and earnings of the freight traffic of The Central Railroad of New Jersey for the calendar year 1907, etc.

Government Exhibit No. 42 is a list of the collieries and the names of the operators located on the lines of The Central Railroad of New Jersey, etc.

Government Exhibit No. 43 shows the capital stock of The Lehigh and Wilkes-Barre Coal Company, etc.

Government Exhibit No. 44 shows the acreage of coal lands owned, held, or leased by The Lehigh and Wilkes-Barre Coal Company, etc.

Government Exhibit No. 45 is a statement of the coal property acquired by The Lehigh and Wilkes-Barre Coal Company since January 1, 1906, by lease, etc.

Government Exhibit No. 46 shows a statement of coal properties purchased by The Lehigh and Wilkes-Barre Coal Company since January 1, 1906, etc.

Government Exhibit No. 47 is a statement of the coal lands leased or sublet to others by The Lehigh and Wilkes-Barre Coal Company, etc.

Government Exhibit No. 48 shows the names of producers of anthracite coal whose output is purchased by The Lehigh and Wilkes-Barre Coal Company under 65 per cent contracts, etc.

Government Exhibit No. 49 is a statement showing the long tons of anthracite coal purchased under 65 per cent contracts by The Lehigh and Wilkes-Barre Coal Company from November 1, 1900, to May 1, 1908.

Government Exhibit No. 50 is a statement showing the total tonnage of anthracite coal purchased by The Lehigh and Wilkes-Barre Coal Company during the calendar year 1907, shipped to New York Harbor points to be put on vessels, etc.

Government Exhibit No. 51 is a statement showing the total long tons of all sizes of anthracite coal shipped to New York Harbor from November 1, 1900, to May 1, 1908, by The Lehigh and Wilkes-Barre Coal Company, etc.

LEHIGH VALLEY R. R. CO.—LEHIGH VALLEY COAL CO.

The statements marked Government Exhibits Nos. 52 to 65, inclusive, were presented by counsel in response to subpœnas duces tecum, calling for the same, duly issued and served upon D. J. Baird, secretary of the Lehigh Valley Railroad Company and The Lehigh Valley Coal Company, Coxe Bros. & Co. (Incorporated), New York and Middle Coal Field Railroad and Coal Company, Locust Mountain Coal and Iron Company, and the Wyoming Valley Coal Company. Counsel for these companies admit that said statements were compiled from the books and records of the companies named therein, and may be treated in all respects as if produced by said officer before the examiner in obedience to the subpœnas and introduced in evidence by the Government. The right is reserved by counsel to object to any matter contained in said statement because irrelevant, or immaterial, or incompetent as to substance.

Government Exhibit No. 52 shows the amount of capital stock of the Lehigh Valley Railroad Company outstanding June 29, 1907, and October 1, 1908, etc.

Government Exhibit No. 53 is a list of the officers and directors of the Lehigh Valley Railroad Company as of June 30, 1907, and October 1, 1908, etc.

Government Exhibit No. 54 is a statement showing the total amount of coal transported over the Lehigh Valley Railroad Company for all shippers to New York Harbor points, f. o. b., for the years 1900 to 1907, etc.

Government Exhibit No. 55 is a statement showing the total freight tonnage of the Lehigh Valley Railroad Company for the fiscal year 1907, etc.

Government Exhibit No. 56 is a statement showing the names of each producer of anthracite coal whose collieries are located on lines operated or controlled by the Lehigh Valley Railroad Company, etc.

Government Exhibit No. 57 is a statement showing the stock in sundry coal companies held by the Lehigh Valley Railroad Company and The Lehigh Valley Coal Company, etc.

Government Exhibit No. 58 is a list of the officers of The Lehigh Valley Coal Company and of other coal companies, etc.

Government Exhibit No. 59 is a statement of the coal lands owned, leased, and held by The Lehigh Valley Coal Company and other coal companies, etc.

Government Exhibit No. 60 is a statement of the anthracite coal lands acquired by The Lehigh Valley Coal Company since January 1, 1896, etc.

Government Exhibit No. 61 is a list of the coal producers from whom The Lehigh Valley Coal Company purchases coal under the so-called 65 per cent contracts, etc.

Government Exhibit No. 62 shows the coal purchased under 65 per cent contracts by The Lehigh Valley Coal Company from December 1, 1900, to December 1, 1907, etc.

Government Exhibit No. 63 is a statement of the long tons of anthracite coal purchased under 65 per cent contracts shipped to and sold at New York Harbor points, f. o. b., by The Lehigh Valley Coal Company, from November 1, 1900, to December 31, 1907, etc.

Government Exhibit No. 64 is a statement of long tons of anthracite coal from each trade region purchased under 65 per cent contracts and shipped to and sold at New York Harbor, f. o. b., by The Lehigh Valley Coal Company, for each month of the calendar year 1907, etc.

Government Exhibit No. 65 is a statement of the anthracite tonnage shipped and sold, f. o. b., at New York Harbor November 1, 1900, to December 31, 1907, by The Lehigh Valley Coal Company, etc.

DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

The statements marked Government Exhibits Nos. 66 to 75, inclusive, were presented by counsel in response to subpœnas duces tecum calling for the same, duly issued and served upon A. D. Chambers, secretary and treasurer of the Delaware, Lackawanna and Western Railroad Company. Counsel for this company admit that said statements were compiled from the books and records of the company named therein and may be treated in all respects as if produced by said officer before the examiner in obedience to the subpœnas and introduced in evidence by the Government. The right is reserved by counsel to object to any matter contained in said statements because irrelevant, immaterial, or incompetent as to substance.

Government Exhibit No. 66 is a statement of the officers and directors of the Delaware, Lackawanna and Western Railroad Company, and so forth.

Government Exhibit No. 67 shows the total shipments of anthracite coal transported by the Delaware, Lackawanna and Western for all shippers, including itself, for the calendar years 1900 to 1907, and so forth.

Government Exhibit No. 68 is a statement showing the tonnage of merchandise and anthracite coal of the Delaware, Lackawanna and Western Railroad and earnings therefrom during the years 1907 and 1908, and so forth.

Government Exhibit No. 69 is a list of the collieries and operators located on the lines of the Delaware, Lackawanna and Western Railroad.

Government Exhibit No. 70 shows the number of acres of land in the anthracite region owned or held otherwise by the Delaware, Lackawanna and Western, and so forth.

Government Exhibit No. 71 is a statement of the properties acquired by the Delaware, Lackawanna and Western by lease or purchase since January 1, 1906, and so forth.

Government Exhibit No. 72 is a statement of anthracite producers who have engaged to sell their output to the Delaware, Lackawanna and Western Railroad under the 65 per cent contracts, and so forth.

Government Exhibit No. 73 is a statement of anthracite coal purchased from coal operators by the Delaware, Lackawanna and Western Railroad from November 1, 1900, to May 1, 1908, under contract, upon the same price basis as that provided in the 65 per cent contract, and so forth.

Government Exhibit No. 74 is a statement of the total tonnage of anthracite coal, all sizes, purchased in the year 1907 by the Delaware, Lackawanna and Western Railroad Company, of sundry independent operators, upon the 65 per cent price basis, and which was shipped to Hoboken over the Delaware, Lackawanna and Western Railroad.

Government Exhibit No. 75 is a statement by months of the total tonnage of anthracite coal shipped by the Delaware, Lackawanna and Western over its lines from the anthracite coal regions of Pennsylvania, consigned to Hoboken, during the years 1900 to 1908, and so forth.

ERIE R. R. CO.—HILLSIDE COAL & IRON CO.—PENNSYLVANIA COAL CO.

The statements marked Government Exhibits Nos. 76 to 94, inclusive, were presented by counsel in response to subpoenas duces tecum calling for the same, duly issued and served upon David Bosman, secretary of the Erie Railroad Company, the Hillside Coal and Iron Company, and the Pennsylvania Coal Company. Counsel for these companies admit that said statements were compiled from the books and records of the companies named therein, and may be treated in all respects as if produced by said officer before the examiner in obedience to the subpoenas and introduced in evidence by the Government. The right is reserved by counsel to object to any matter contained in said statements because irrelevant, immaterial, or incompetent as to substance.

Government Exhibit No. 76 is a statement showing the outstanding capital stock of the Erie Railroad Company, together with the names of its directors and officers, and so forth.

Government Exhibit No. 77 is the anthracite tonnage transported to New York Harbor points over the Erie Railroad in the years 1905, 1906, and 1907, etc.

Government Exhibit No. 78 shows the total freight traffic over the Erie Railroad for the year 1907, etc.

Government Exhibit No. 79 is a statement showing the name of each producer of anthracite coal whose collieries are located upon or

reached by way of the lines operated or controlled by the Erie Railroad, etc.

Government Exhibit No. 80 is a statement of the directors and officers of the Hillside Coal and Iron Company, etc.

Government Exhibit No. 81 is a statement of the directors and officers of the Pennsylvania Coal Company, etc.

Government Exhibit No. 82 is a statement of the coal lands of the Hillside Coal and Iron Company, etc.

Government Exhibit No. 83 is a statement of the lands leased to others by the Hillside Coal Company, etc.

Government Exhibit No. 84 is a statement of the coal lands of the Pennsylvania Coal Company, etc.

Government Exhibit No. 85 is a statement of the lands leased to others by the Pennsylvania Coal Company.

Government Exhibit No. 86 is a list of producers who sell their coal under 65 per cent contracts to the Hillside Coal and Iron Company, etc.

Government Exhibit No. 87 is a statement concerning purchases of coal by the Pennsylvania Coal Company, etc.

Government Exhibit No. 88 is a statement of the coal purchased by the Hillside Coal and Iron Company from November, 1900, to April, 1908.

Government Exhibit No. 89 is a statement of the shipments to New York Harbor by the Hillside Coal and Iron Company of all anthracite coal purchased under 65 per cent contracts.

Government Exhibit No. 90 is a statement of the total shipments of anthracite coal to New York Harbor points from November, 1900, to December, 1907, by the Hillside Coal and Iron Company, etc.

Government Exhibit No. 91 is a statement of the anthracite coal purchased by the Pennsylvania Coal Company, not under the 65 per cent contracts, but on the price basis therein provided, etc.

Government Exhibit No. 92 is a statement of the shipment to New York Harbor points by the Pennsylvania Coal Company of coal purchased on the price basis of 65 per cent contracts for the year 1907.

Government Exhibit No. 93 is a statement of total shipments of anthracite coal by the Pennsylvania Coal Company to New York Harbor points from March, 1901, to December, 1907, inclusive, etc.

Government Exhibit No. 94 is a statement of anthracite coal mined by the Hillside Coal and Iron Company and sold to the Pennsylvania Coal Company at the mines from July, 1905, to April 30, 1908, etc.

NEW YORK, SUSQUEHANNA & WESTERN R. R. CO.—NEW YORK, SUSQUEHANNA & WESTERN COAL CO.

The statements marked Government Exhibits Nos. 95 to 105, inclusive, were presented by counsel in response to subpœnas duces tecum calling for the same, duly issued and served upon David Bosman, as secretary of the New York, Susquehanna and Western

Railroad Company, and The New York, Susquehanna and Western Coal Company. Counsel for these companies admit that said statements were compiled from the books and records of the companies named therein and may be treated in all respects as if produced before the examiner by said officer in obedience to the subpœnas and introduced in evidence by the Government. The right is reserved by counsel to object to any matter contained in said statement because irrelevant, immaterial, or incompetent as to substance.

Government Exhibit No. 95 is a statement of the capital stock of the New York, Susquehanna and Western Railroad, and certain holders thereof, and the directors and officers of said company, and so forth.

Government Exhibit No. 96 is a statement of the anthracite tonnage transported to New York Harbor points, f. o. b., by the New York, Susquehanna and Western Railroad Company, and so forth.

Government Exhibit No. 97 is a statement of the total freight tonnage and total freight revenue of the New York, Susquehanna and Western Railroad for the year 1907, and so forth.

Government Exhibit No. 98 is a list of the producers of anthracite coal whose collieries are located upon or reached by way of the lines operated or controlled by the New York, Susquehanna and Western Railroad Company.

Government Exhibit No. 99 is a statement showing the officers and directors of The New York, Susquehanna and Western Coal Company, its capital stock outstanding, and certain holders thereof, and so forth.

Government Exhibit No. 100 is a statement of the coal lands of The New York, Susquehanna and Western Coal Company, and so forth.

Government Exhibit No. 101 is a statement showing the producers of anthracite from whom The New York, Susquehanna and Western Coal Company purchases coal under the 65 per cent contracts, and so forth.

Government Exhibit No. 102 is a statement showing the anthracite coal purchased under the 65 per cent contracts by The New York, Susquehanna and Western Coal Company from November, 1900, to June 30, 1901, and so forth.

Government Exhibit No. 103 is a statement showing the anthracite coal purchased by The New York, Susquehanna and Western Coal Company under 65 per cent contracts, and sold to the Hillside Coal and Iron Company at the mines, from January, 1901, to June 30, 1905.

Government Exhibit No. 104 is a statement showing the anthracite coal purchased by The New York, Susquehanna and Western Coal Company under 65 per cent contracts, and sold to the Pennsylvania Coal Company at the mines, from July 1, 1905, to April 30, 1908, and so forth.

Government Exhibit No. 105 is a statement showing the total shipments of anthracite coal made by The New York, Susquehanna and

Western Coal Company to New York Harbor points, f. o. b., from November, 1900, to June 30, 1901, and so forth.

THE TEMPLE IRON COMPANY.

The statements marked Government Exhibits Nos. 106 to 111 inclusive were presented by counsel in response to subpœnas duces tecum calling for the same, duly issued and served upon George L. Houser, as secretary of The Temple Iron Company. Counsel for this company admits that said statements were compiled from the books and records of the company named therein and may be treated in all respects as if produced before the examiner by said officer in obedience to the subpœnas and introduced in evidence by the Government. The right is reserved by counsel to object to any matter contained in said statements because irrelevant or immaterial or incompetent as to substance.

Government Exhibit No. 106 is a list of the officers and directors of The Temple Iron Company as of June 12, 1907, and September 29, 1908.

Government Exhibit No. 107 is a list of the stockholders of record of The Temple Iron Company as of June 12, 1907, and September 29, 1908.

Government Exhibit No. 108 shows the total number of acres of land in the anthracite producing area of Pennsylvania, owned or leased by The Temple Iron Company, or companies which it controls, and so forth.

Government Exhibit No. 109 shows the date, amount, and general location of each separate acquisition of land by purchase by the controlled companies of The Temple Iron Company in the anthracite producing area of Pennsylvania, and so forth.

Government Exhibit No. 110 shows the date, amount, and general location of each separate acquisition of land by lease by the controlled companies of The Temple Iron Company in the anthracite producing area of Pennsylvania, and so forth.

Government Exhibit No. 111 shows the number of acres of land in the anthracite producing area of Pennsylvania leased by The Temple Iron Company and its controlled companies to others, and so forth.

P. B. HEILNER, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Please put in the record a statement of your age, occupation, and residence.—A. Age, 60; residence, Elizabeth, N. J.; occupation, general agent for The Lehigh and The Wilkes-Barre Coal Company.

Q. What are your duties as such general agent?—A. I look after the sales, the orders for the coal, see that the money comes in, and the general business here of the company.

Q. You are, in other words, the general sales agent of the coal of The Lehigh and Wilkes-Barre Coal Company, located at Elizabeth, N. J.?—A. That is my residence. My office is at 143 Liberty street.

Q. How long have you been sales agent of The Lehigh and Wilkes-Barre Coal Company?—A. Since 1893.

Q. Have you been located in New York all that time?—A. My office has.

Q. How long have you been connected with The Lehigh and Wilkes-Barre Coal Company in any capacity?—A. From that date, 1893.

Q. Your office is at 143 Liberty street, New York City?—A. Yes.

Q. Are the offices of the sales department of The Philadelphia and Reading Coal and Iron Company in that same building?—A. Yes.

Q. And on the same floor with you?—A. Yes.

Q. And adjoining rooms?—A. Yes, sir.

Q. Have you charge of all sales of coal produced by The Lehigh and Wilkes-Barre Coal Company, or only the sales at or near New York?—A. I have charge of all of them—that is, I distribute the coal, all the coal that is shipped. I have charge of it; yes, sir.

Q. What is the annual output of The Lehigh and Wilkes-Barre Coal Company, approximately?—A. About 5,000,000 tons now, annually.

Q. Where is most of that coal sold?—A. About two-fifths of it I should think comes to the dock and the balance on the line.

Q. Give us the lines along which the remaining three-fifths is sold?—A. It is sold along the lines of the Central Railroad of New Jersey and its connections.

Q. Do you ship any coal West?—A. No, sir.

Q. Then the 5,00,000 tons, in round numbers, produced by The Lehigh and Wilkes-Barre Coal Company, is sold between the mines and New York City, and at tide in New York harbor?—A. And in New England. We have some business by rail into New England.

Q. How does the rail business to New England go—over what line is it transported?—A. The New York and New Haven, the Boston and Albany, and the Boston and Maine.

Q. What proportion of the output of The Lehigh and Wilkes-Barre Coal Company colleries, and of the coal purchased and sold by the company, is transported over the line of the Central Railroad of New Jersey?—A. All of it to the collecting points.

Q. I show you Ruley's map of the anthracite coal region, already introduced in evidence, and ask you to point out where the collieries of The Lehigh and Wilkes-Barre Company are located?—A. The company has 8 collieries in the Wyoming region, in the neighborhood of Wilkes-Barre, and 2 in the Lehigh region in the neighborhood of Audenreid.

Q. Are all 10 of these collieries reached by the lines of the Central Railroad of New Jersey?—A. Yes, sir.

Q. Does The Lehigh and Wilkes-Barre Coal Company own and operate any railroad lines of its own?—A. Not that I know of; no, sir. I know we do not.

Q. Does The Lehigh and Wilkes-Barre Coal Company issue circulars giving to the trade its prices on coal from time to time?—A. No, sir; we issue no circulars from my office.

Q. Does it issue any circulars that you know of?—A. The line agent issues a circular.

Q. Explain what you mean by that.—A. We have a man who looks after the line business, and we call him the line agent.

By Judge CAMPBELL:

Q. That means the trade on the lines of the Central Railroad of New Jersey and local points?—A. Yes, sir.

By Mr. MCREYNOLDS:

Q. Does that circular come to you or under your supervision before it is finally printed and sent out?—A. No.

Q. Who is the line agent?—A. E. B. Ducker. I see them though.

Q. Are those prices the prices for delivery at the colliery or at the several stations along the line?—A. The prices are at the colliery or collieries.

Q. Has The Lehigh and Wilkes-Barre Coal Company issued any circulars from your office showing the price f. o. b. coal New York Harbor since you have been its general agent in New York?—A. We have issued none since 1895, and that is the year I went with the company. There may have been a few in the early part of that year.

Q. Does your company observe the practice of giving a minimum price for coal in April of each year and increasing that price by 10 cents each month up until August?—A. Our prices increase every month.

Q. You do not mean that your prices increase every month in the year?—A. No; every month from the 1st of May to the 1st of September.

Q. Who fixes the prices at which your coal shall be sold at New York Harbor?—A. My president.

Q. Does he instruct you from month to month what prices to quote?—A. Practically; yes, sir.

Q. When did your company inaugurate the system of giving a minimum price for coal shipped in April and increasing that price 10 cents per month thereafter up until September?—A. I think in 1901. That is my impression.

Q. Did the other coal companies who sell coal f. o. b. New York Harbor inaugurate that practice at the same time?—A. I do not know.

Q. You keep yourself advised about the prices other people are selling for, do you not?—A. I try to; yes, sir.

Q. Is it a fact or not that for many years that has been the practice of all the leading coal companies selling f. o. b. New York Harbor?—A. I think it has.

Q. Does your president consult with you about the prices which shall be quoted for coal New York Harbor?—A. Yes, sir; from time to time.

Q. Do you have a monthly consultation about it?—A. Practically; yes, sir.

Q. How long since there has been any change in the published quoted prices of coal, New York Harbor, f. o. b., by your company?—A. Our price since the 1st of September has been just as it is now.

Q. What are your present prices of coal?—A. $4.95 at Port Johnston for the three prepared sizes.

Q. Is that for October delivery?—A. For October delivery.

Q. How long have the prices for October delivery been the same?—A. In past years?

Q. Yes.—A. I think since 1902 or 1903. I think I am correct in that.

Q. Since 1902 and 1903 has your price been all the time $4.95 for these sizes, commencing with September 1 and continuing until April 1?—A. Yes; they have been.

Q. And during that time has your company uniformly reduced its price on the 1st of April to $4.45?—A. Yes, sir.

Q. And each month thereafter added 10 cents to that amount up to the 1st of September?—A. Yes, sir.

Q. Has the same practice been observed by the other companies who sell f. o. b. New York Harbor?—A. I do not know.

Q. What is your information about it?—A. The information I can get is that they practically do, but I am not sure on that.

Judge CAMPBELL. I object to that question and answer as incompetent, and as no proof of the fact respecting the conduct of others of whom he may have knowledge, but which this witness disclaims.

Q. What companies sell f. o. b. New York Harbor the same grades of anthracite coal as those sold by the Lehigh and Wilkes-Barre Company?—A. Those that are in the same field with us, practically.

Q. Mention their names.—A. The Delaware, Lackawanna and Western; the Erie; the Delaware and Hudson; and the Lehigh Valley.

By Mr. DE FOREST:

Q. When you speak of the Erie and the Lehigh Valley and other railroads, you mean coal which is shipped over these roads?—A. Yes.

Q. You do not mean that the railroads sell the coal?—A. No; he said companies, and I assumed he meant coal companies.

By Mr. MCREYNOLDS:

Q. Why are your prices fixed at $4.95 f. o. b. Port Johnston, instead of $5?—A. Our water freights are more than the companies shipping across the river.

Q. Your coal lands at Port Johnston?—A. Yes, sir.

Q. And your water freights you say are more. What do you mean by water freight?—A. The lighterage to points about the harbor from Port Johnston.

Q. To what points?—A. Any point in New York Harbor.

Q. Port Johnston is not technically in New York Harbor?—A. It is not practically in what we might call New York Harbor. It is on the Kills.

Q. And the 5 cents difference is allowed on account of the water freight from Port Johnston to what point?—A. Any point we can reach by water.

Q. For coal landed at Port Johnston, which is intended to be delivered in New York City, it costs for water freight 5 cents per ton more than if that coal was delivered at Hoboken?—A. Yes.

Q. Or Jersey City?—A. Yes, sir.

Q. And to meet that difference your company allows this differential of 5 cents per ton?—A. Yes, sir.

Q. What other points are there on New York Harbor from which differentials are allowed?—A. All the lower ports—Elizabethport, Port Reading, Perth and South Amboy.

Q. Is an allowance for Elizabethport and Perth Amboy, for instance, the same as from Port Johnston?—A. As far as I know it is.

Q. So far as you know, what is the price of coal to-day quoted by the large companies selling anthracite coal in New York Harbor along the wharves in New York City?—A. I do not know what the other man asks.

Q. You do not advise yourself about what your competitor is selling his coal for?—A. I do, as nearly as I can.

Q. As nearly as you have been able to gather it, what is it?

Judge CAMPBELL. That is objected to as not a matter within the witness's knowledge.

A. About $5.15.

Q. That $5.15 applies to the companies selling coal, as far as you know, f. o. b. New York Harbor, alongside the wharves in New York City?—A. I do not know. I suppose that is what it applies to.

Q. Has not that been the price of all these companies since 1902 and 1903?—A. The circular has been the same. I do not know.

Q. Have you any advance information from time to time as to what the circular prices of The Philadelphia and Reading Coal and Iron Company are to be?—A. No, sir; no advance information.

Q. Has there been any change in the quoted prices of The Philadelphia and Reading Coal and Iron Company's coal in New York since 1903?—A. I do not know.

Q. You are not aware of any, if there has been any?—A. No.

Q. Your company has its own customers, and how do you sell them in New York?—A. I get after my customers wherever I have an opportunity and sell them if I can. I do not know just what principles apply to selling coal that do not apply to other things.

Q. Do you make long-time contracts or sell for immediate delivery?—A. We have some long-time contracts; yes, sir.

Q. What determines the price which you quote for your coal?—A. I quote the prices which have been given to me by my president.

Q. You said you consulted with him about these prices before they were made. What elements enter into making up that price?—A. The general trade conditions govern these things, as a rule.

Q. I understand the general trade conditions have not induced you to change that price since 1903?—A. I told you I get my prices from my president.

Q. In selling your coal do you ever seek to gain customers by shading the prices?—A. I have done so.

Q. Do you mean you give him time or make an actual reduction in the price?—A. We have made an actual reduction in the price. I do not know of any more than one instance that we have extended the time.

Q. Is it not your purpose to fix the prices of your coal that you quote exactly at the same as the other large coal companies are fixing theirs?—A. My president fixes those.

Q. Is it not the purpose of you and your president, and your company, to fix the prices of the coal sold by you exactly at the same as those quoted by other companies selling New York Harbor?—A. I can not answer for my president, but for myself I want to get the same price that other people do. That is my ambition.

Q. Do you see the price circular of The Philadelphia and Reading Coal and Iron Company before it is issued, from month to month?—A. No, sir; I have not.

Q. Have you any definite idea of what the prices quoted on that circular are to be before it is issued?—A. No; except in my general talk with the president.

Q. Your average prices are made up every month, are they; the average prices for your coal sold f. o. b. New York Harbor are made up every month?—A. They are made up in the Philadelphia office.

Q. There is some slight variation in them every month?—A. Yes.

Q. Is it or not a frequent thing to have reclamations because the coal sent does not quite come up to the standard?—A. We have reclamations for what the buyer calls unmerchantable coal.

Q. And you allow them sometimes?—A. Sometimes, when we have to.

Q. That affects your average prices, does it not?—A. I do not know. I rather think it does, but I do not know.

Q. You report to the auditor just what you get in dollars and cents?—A. Yes.

Q. If he makes up the average from that then it would have to be in there?—A. Generally the reclamations for this month would come in the next month's averages, as a rule.

Q. What other things happened which would vary the average prices, although the quoted prices remain the same?—A. There are claims for unmerchantable coal, and sometimes for short weight—unjust claims.

Q. Put in the record the things that affect these averages, although the quotations remain the same.—A. I do not know that they affect the average positively; I can not tell that.

Q. What is there that affects the total amount of money you get besides the reclamations for short weight and unmerchantable coal?—A. I generally get my bills collected as rendered.

Q. In reporting to Mr. Ruley, the head of the bureau of statistics, do you make any allowance for uncollected bills?—A. No, sir.

Q. Whether the bill is paid or whether it is not?—A. I do not report to Mr. Ruley at all.

Q. Who does report the amount of money received for sales of coal in New York Harbor by your company?—A. The Philadelphia main office.

Q. How do they get the information?—A. From the sales.

Q. Don't you make the sales?—A. Yes.

Q. You collect the money—A. Yes; the money goes to the treasurer.

Q. Do you report that to the Philadelphia office?—A. I report the sales and the treasurer reports the receipts of money.

Q. You do not know whether the treasurer reports in cases of bad debts just as if the money had been collected?—A. No, sir; he would not do that.

Q. For sales made here f. o. b. you report to the treasurer?—A. No; I do not report the sales made to the treasurer. I send my sales to the general office in Philadelphia.

Q. Who receives the money for the sales you make?—A. The treasurer, as a rule. Sometimes some addressed to the company may come on my desk and I send them to him.

Q. These total receipts for coal f. o. b. New York Harbor are sent to the bureau of coal statistics in Philadelphia, are they not?—A. The receipts.

Q. Yes.—A. I do not know.

Q. The averages which are made up from month to month include something you do not know about? You do not know how they are computed?—A. I do not.

Q. What is the name of your treasurer?—A. G. O. Waterman.

Q. Can you give us what it costs to sell coal, what it costs your company to sell coal, or to sell the coal which is sold f. o. b. New York Harbor, how much per ton?—A. I can not separate it.

Q. From what?—A. From the balance of the business. You asked me if I can give you the average cost of selling coal f. o. b. New York Harbor?

Q. Yes.—A. I can not.

Q. You said you could not separate it from the other business—what other business?—A. The rail business. You asked f. o. b. We have a business direct on the line of the road.

Q. What is the average cost of selling coal of your company, taking it all into consideration?—A. Between 3 and 4 cents a ton, I should think.

Q. What is the wastage which your coal sustains from the time it leaves the breakers until it is delivered on barges in New York Harbor?—A. I would only have to make a guess at that. I should estimate it at 1½ per cent.

Q. When the coal comes down in bad weather, wet or all covered with snow, is any allowance made to the customer by reason of those things?—A. We attempt to clean the snow off, and there is an allowance made for the screenings.

Q. I understood you that, as far as you knew, it had been the general practice among the companies selling coal at New York Harbor, beginning with the 1st of April in each year, to decrease all prices 50 cents and then to add to this minimum price 10 cents each month up to and including August. Was there not a change in that practice in the year 1906?—A. I do not recall any change.

Q. Do you not remember in the year 1906 that change in prices was not made until May?—A. We had a strike in the year 1906, and that may have been the cause, if that was the case.

Q. To refresh your recollection about that, do you know the periodical "The Coal Trade?"—A. Yes, sir.

Q. It is a reliable trade journal, is it not?—A. I think perhaps so.

Q. It is so regarded in the trade, is it not?—A. Yes.

Q. I read you from "The Coal Trade" for the year 1907, on page 35: "For the producing and shipping interests whose tonnage finds an outlet largely through the New York loading port, for use locally or to the eastward, 1906 was, on the whole, a year of satisfactory results. Prices fluctuated through quite a wide range, and periods of dullness and light demand for 'free' coal were not unknown, but when figures were totaled and comparisons made it was found that consumption had probably exceeded all previous records and that prices realized were, practically without exception, on a higher level than in the preceding year.

"The five weeks of idleness in the anthracite region caused little distress or embarrassment in this market, nor was it accompanied by any notable advance in prices. Probably the most conspicuous feature was the action of the large producing companies in deferring until about the middle of May the announcing of the usual series of discounts from the circular price. It had been generally anticipated that the spring circular, offering a discount of 50 cents a ton on April shipments, would be published at the usual time; that the companies would adhere to their regular practice, nominally, however great might be the restrictions placed on the movement of tonnage. This policy was not carried out, however, and it was not until after a settlement in the mining region had been effected that the summer price list was sent out. An agreement was not reached until the 12th of May, but the circular was retroactive to the extent of including all the shipments made during the month, so that it was only on coal moved in April that the regular winter price of $5 f. o. b. was applied. This tonnage was not large, however, as all the mines were idle and the companies did not evince a desire to release any important part of the stock held in storage. No advance was made above the winter schedule, except by individual shippers who happened to have a little coal on hand when the suspension in the coal fields began. When things were again on a normal footing, there was no

real rush for coal, and although the tonnage of anthracite moved during the summer months was large it went forward so quietly that many were surprised to learn how great the movement had really been." Do you remember the trade circular referred to in this publication instead of being issued on the 1st of April being deferred to May 12?—A. We issued no circular. I do not remember about the other.

Q. Do you remember about your prices not being lowered until May of that year?—A. I got my instructions from my president. Yes; we did not change the prices in April.

Q. Nor did the other companies change their prices in April?—A. I do not know.

Q. What is your information?—A. I have no particular information.

Q. But you have information about what is going on in the coal trade here in New York?—A. I am supposed to have. I hope I have.

Q. Don't you know in 1906 the usual price was not changed in April?—A. I do not know as to the other companies, but I know ours was not, and I suppose the rest were not.

Q. I understand your information is that all the companies made this change at the same time?—A. That is my belief now.

Q. And that this statement published in this coal trade is correct?

Mr. Moor. I object on the ground that it is not competent for the Government, or proper, to ask the witness the train or trend of his own belief; to ask him that as to a statement based on the operations of different companies, among different companies involving millions of tons, as to which it is perfectly apparent the witness has and can have no personal knowledge of his own whatever.

Q. Does this publication, which I have already read you, set out accurately your understanding of what went on in the year 1906?

Mr. Moor. That is objected to on the ground that the witness's understanding is not competent evidence against any defendant on this record.

A. Do you mean all that you read?

Q. Yes; I refer more particularly to the change in price in May instead of in April, according to the way the practice existed theretofore.

Judge Campbell. I desire to note the same objection to this question.

A. Have not I already said to you that was my belief?

Q. (Question repeated.)—A. My recollection is that it does.

Q. Will you name the terminal points in New York Harbor of the several anthracite carriers?—A. Hoboken for the Delaware, Lackawanna & Western; Edgewater for the Ontario & Western; the Erie is Jersey City, Weehawken, and Edgewater; the Philadelphia & Reading is Port Reading; the Pennsylvania Railroad is South Amboy; the Susquehanna Coal Company is South Amboy; the Lehigh Valley terminal is Perth Amboy; the Central of New Jersey is Port Johnston and Elizabethport.

Q. From which of these terminal points is the differential allowed on account of increased water freight, in order to bring the coal alongside the docks in New York city?—A. The lower points are at a disadvantage; Perth Amboy and South Amboy, Elizabethport, Port Reading, and Port Johnston.

Q. Is the differential allowed under this the same in each case?—A. I do not know. It is farther down to the lower ports than it is to Port Johnston.

Q. Do you know what the marine freight from Port Johnston to New York City is?—A. The water freight?

Q. Yes.—A. It is not fixed. We get it as low as we can.

Q. It is about 20 cents a ton, is it not?—A. I might say from 16 to 20 cents. It depends.

Q. What is the difference in the price of coal delivered f. o. b. at Hoboken and delivered along the wharves at New York City?—A. What difference is the water freight?

Q. What is allowed for that?—A. I do not know how to answer that. Men buy their coal on board and put it on their own boat, and I do not know what they pay for it.

Q. What is the freight rate on the coal from the collieries of The Lehigh and Wilkes-Barre Coal Company to Port Johnston?—A. $1.55 on the prepared coal. It is less on the small coal.

Q. What is the rate on the same sort of coal delivered from the collieries of other companies at Hoboken?—A. I do not know.

Q. Don't you know the freight rate is so arranged as to put the coal from all companies alongside the wharf in New York City at the same price?—A. No, sir; I do not.

Q. You testified in an investigation before the Interstate Commerce Commission, held in 1903, did you not?—A. Yes, sir; I did.

Q. I read you from your testimony in that case to refresh your recollection: "Q. Do you know what the charges are for marine freight between Port Johnston and New York, alongside New York?—A. About 20 cents a ton. Q. It is a fact, is it not, that the marine freight from the different shipping points at tide water, in New York, varies so as to make the alongside prices uniform?—A. Well, I think so, as a rule. Q. Won't you explain what you mean by that?—A. Well, if my rates of freight were more, I could not sell my coal. If my rates of freight were all out of proportion from other docks, I could not sell my coal in New York or anywhere else. Q. There is a certain rate of marine freight from Port Reading alongside New York?—A. Yes, sir. Q. Do you know what that is?—A. I think it is 20 cents; I am not sure." Was your statement there that the marine freight from the different shipping points at tide water, New York, varies so as to make the alongside price uniform correct or not?—A. You are talking about the railroad rates—you asked me about the rate of freight from the mines to Port Johnston. I do not know what the rate of freight is that would correspond to Hoboken. I have to get coal to market at the same price as other people or we can not sell our coal.

Q. As a matter of fact the marine freight was adjusted to make the rate for all companies the same when they bring their coal alongside New York City?—A. If you put it that way, we have to get the same.

Q. And transport your coal from Port Johnston?—A. Yes.

Q. How do you transport it?—A. We charter boats in the market wherever we have any business.

Q. You do it yourselves?—A. Some of the office force does it.

Q. Does your company, the Lehigh and Wilkes-Barre Company, look after that matter, or is that matter looked after by the railroad company?—A. We do that—the coal company.

Q. And is the coal that goes over the Central of New Jersey to tide divided between Port Johnston and Elizabethport—is there any rule for such a division, or do you know of any—is there any reason why a particular carload of coal should go to Port Johnston rather than Elizabethport?—A. No; all coal of The Lehigh and Wilkes-Barre Coal Company shipped f. o. b. comes to Port Johnston, but at Elizabethport there are a lot of individual shippers.

Q. Is John Edmonds the present sales agent of the Reading Coal and Iron Company in New York?—A. No, sir.

Q. Does he hold any position with that company that you know of?—A. Not that I know of.

Q. Do you know where he can be found?—A. He is in Philadelphia.

Q. Who is the general sales agent in New York of The Philadelphia and Reading Coal and Iron Company?—A. Mr. Frank Oberender.

(Recess until 2.15 p. m.)

2.15 O'CLOCK P. M.

G. A. RICHARDSON, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. State your residence and the official position which you have with any of the defendants.—A. My residence is New York City. I am vice-president of the Erie Railroad Company, New York, Susquehanna and Western Railroad Company, the Hillside Coal and Iron Company, the Pennsylvania Coal Company, and The New York, Susquehanna and Western Coal Company.

Q. How long have you held the position of vice-president of these several companies?—A. Approximately four years.

Q. Who was your immediate predecessor?—A. The office, I believe, was vacant for some period of time, and prior to that time some of these positions were held by George M. Cumming.

Q. As vice-president of the railroad companies, have you or not a special supervision of the coal traffic?—A. I have.

Q. And as vice-president of the coal companies what are your duties?—A. A general supervision of the operations of these companies.

Q. Please describe with reference to the map which has already been introduced in evidence the general location of the collieries belonging to the Hillside Coal and Iron Company.—A. They are in the eastern end of the northern field, or Wyoming region, in the general neighborhood of Scranton.

Q. Where are the collieries of the Pennsylvania Coal Company—are they in the same general region?—A. They are in the western end of that same district, and generally in the neighborhood of Scranton.

Q. And where are the collieries of The New York, Susquehanna and Western Coal Company?—A. They are also in the neighborhood of Scranton.

Q. What railroad system reaches and serves the collieries of the three companies of which you are vice-president?—A. The Erie Railroad, the New York, Susquehanna and Western Railroad, and the Delaware and Hudson.

Q. How long have you been acquainted with the workings in that system? How long have you been acquainted with the anthracite business in that region which you have just described?—A. About the same length of time I have held an official position with the company.

Q. Have the railroad systems which you have just described reached into that general region or served that general region during these four years?—A. Yes.

Q. Please describe for the record the route of the traffic moving from the collieries of the Hillside Coal and Iron Company, over the Erie system, to tide at New York Harbor.—A. The coal which is mined in the southern territory of the eastern district, so-called, is moved to tide by the way of the Erie and Wyoming Valley Railroad, a division of the Erie Railroad, to Lackawaxen, and thence over the main line of the Erie Railroad to tide water.

Q. Has that route varied since you have been connected with the company?—A. As far as the amount of traffic over the Erie is concerned, that which is mined in the eastern end of the district, namely, in the territory of Forest City, it is moved over the Jefferson branch of the Erie to Jefferson Junction, and then over the main line of the Erie to tide water.

Q. And have those been the routes followed since you have been connected with the company?—A. Yes.

Q. Please describe the route which is followed by coals moving over the New York, Susquehanna and Western Railroad from the collieries operated by the Hillside Coal and Iron Company.—A. Over the Wilkes-Barre and Eastern road to Stroudsburg, and then over the New York, Susquehanna and Western road to tide water.

Q. What is the Wilkes-Barre and Eastern?—A. It is a part of the New York, Susquehanna and Western system. It is operated by that company.

Q. What is the arrangement between the roads? What do you mean by "operated by?" What is the arrangement under which it

is operated?—A. I think by ownership of the capital stock, to the best of my recollection.

Q. At what point on New York Harbor are the coals moving over the Erie lines delivered?—A. At both Weehawken and Edgewater.

Q. And at what point is the coal moving from and over the New York, Susquehanna and Western delivered?—A. Principally at Edgewater.

Q. Are both these points upon what is understood to be New York Harbor waters?—A. They are.

Q. Were you acquainted with The New York, Susquehanna and Western Railroad Company's affairs before its capital stock was purchased by the Erie?—A. No, sir.

Q. What was your occupation before you became vice-president of the several companies you have named?—A. Assistant to the secretary and president for the previous year.

Q. For just one year?—A. Yes; but without any official title for about a year and a half prior to that.

Q. How long have you been connected with the Erie system in any way?—A. Since May 1, 1901.

Q. Describe for the record how the Erie system gets to the collieries owned by the Hillside Coal and Iron Company from Lackawaxen, over what lines.—A. The connection between the main line of the Erie Railroad Company and the coal region by way of Lackawaxen is the Erie and Wyoming Valley Division, and consequently the traffic would have to move by way of Lackawaxen.

Q. Is the Erie and Wyoming Valley owned by the Erie Railroad?—A. I am unable to answer that question technically.

Q. At all events the Erie and Wyoming Valley Railroad Company is controlled by the Erie, through stock ownership or lease. Is that right?—A. Yes.

Q. What connection have you with determining the price at which coals sold by the Hillside Coal and Iron Company, the Pennsylvania Coal Company, and The New York, Susquehanna and Western Coal Company are sold?—A. I would have the authority to approve or disapprove prices made by the sales agents of the company.

Q. As a matter of fact do you approve or disapprove?—A. In some cases where they are brought to my attention.

Q. Tell us in a particular way how these prices are fixed.—A. My best description of it would be that upon taking my office I found certain prices in existence.

Q. And those prices have remained?—A. And those prices have been maintained, probably with some exceptions, throughout this period.

Q. And those exceptions have been minor exceptions and isolated cases?—A. I would hardly express them as minor changes, but there have been few changes in that length of time.

Q. In the main the prices of the domestic sizes have remained the same as when you went into office?—A. To the best of my recollection.

Q. Do these companies issue circulars from month to month, showing the prices at which their coals would be sold?—A. I believe the sales agents issue circulars from time to time, stating the prices that coal will be sold for during certain months or certain periods.

Q. Who is the coal agent who is in active charge of that matter? Who are the agents?—A. Williams and Peters.

Q. What is the connection between Williams and Peters and these various coal companies of which you are vice-president?—A. They are the general sales agents of this company.

Q. Employed upon a salary?—A. To the same effect. They are employed on a commission basis.

Q. They have no power to fix prices of your coals?—A. Not without the approval of myself or one of my superior officers.

Q. Do you know how often the circulars of price quotations are given out in behalf of these coal companies?—A. I am unable to answer that.

Q. Since you have been connected with them they have always on the 1st of April reduced the price 50 cents below what it was in March, and increased it 10 cents each month up to and including August, have they not?—A. I will not say that for the entire period; but that has been the practice for several years—to give a discount commencing with the month of April upon what is called the circular price, and continuing it until September, but whether it has been during this period or not I am unable to say.

Q. Are you advised concerning the report made by these coal companies, of which you are vice-president, to the bureau of anthracite coal statistics at Philadelphia?—A. I am not fully informed on that.

Q. Who makes up these statements that are sent; because it is already in evidence that such statements are sent?—A. I do not know as I can say definitely. They are prepared, I believe, in the office of the general assistant freight agent, in charge of the New York traffic. I believe they refer to the coal tonnage moving over the railroad.

Q. The average prices received at tidewater are also reported?—A. They are reported by the sales agents.

Q. By Williams and Peters?—A. Yes.

Q. The detail of that you are not acquainted with?—A. I am not fairly familiar with the details.

Q. Do you know whether that is the report of the gross sum actually received by them for all coal sold during the month, and whether they figure in that the reclamations, or whether the schedule prices are quoted?—A. I could not testify on that subject.

Q. Your sales agents are required to sell the coal at the prices which you have agreed upon in advance, I presume?—A. They are supposed to sell the coal at the prices which they have, unless they have secured authority to make some changes, or have taken the responsibility for making such changes on the theory that they would be approved.

Q. Do you know how the prices which have been in effect since you have been connected with these coal companies were originally arrived at?—A. I do not.

Q. Have you informed yourself from month to month about the prices made by other coal selling companies?—A. That is part of the functions and duties of sales agents, to know the prices and market conditions.

Q. Have you informed yourself from month to month about the prices made by other coal selling companies, or do you so inform yourself?—A. I do not.

Q. Don't your sales agents give you that information?—A. In a general way, if there is any special reason, if anything would come to their attention.

Q. Your prices for coal are fixed for twelve months ahead, are they not?—A. Not that I am aware of.

Q. How long ahead are they fixed?—A. Are you referring to contracts?

Q. No, the prices which you quote to the trade.—A. I do not believe the prices are guaranteed for any length of time by the sales agent, except as might be announced in the circulars that they might issue.

Q. These sales agents would know what circulars are issued, would they not?—A. They would.

Q. Have you the circulars which have been issued by these sales agents from time to time within the last five years?—A. I think I have copies of the circulars issued by them during that period, in my office files.

Q. Can you produce for us copies of all these circulars which have been issued since January, 1901?—A. I could not undertake to do that.

Q. Can they be had from your files?—A. I am inclined to think they can be had from the files of the company, more especially from the files of the sales agent. I could furnish those back to January, 1904, but I cannot be responsible back of that. I will produce them so far as I can, to be made Government exhibits.

Q. It is your purpose to have your coal sold at the same price that other large coal producing and selling companies sell, is it not?—A. I know of no purpose to that effect. I think that the sales of our company are conducted on commercial principles, to get what price we can for our coal.

Q. And the result of that is that you do sell at the same prices that the others do?—A. I assume that is generally the case.

Q. Is it not in nearly every case the fact?—A. I think there are a number of exceptions.

Q. And the exceptions are comparatively few as compared with the great multitude of sales, are they not?—A. I assume that is true, on the prepared sizes of coal.

Q. Is it not a fact that your circulars quote the same prices that are quoted by other large mining and selling coal companies?—A. I

assume that to be true, although I have not full information on that subject. I have not seen the other circulars.

Q. Were you connected with the Susquehanna and Western Railroad Company prior to five years ago?—A. I think my connection with the Susquehanna Railroad dated from about the time or about the same time as my connection with the Erie Railroad.

Q. Did you have any connection with the Susquehanna Railroad, or were you employed by them or connected with that railroad in any capacity whatsoever?—A. I have been employed by the Susquehanna road the same length of time as I have been by other companies, and in practically the same capacities.

Q. Had you any connection with the Susquehanna before you went with the Erie?—A. No, sir.

Q. At what point is the anthracite coal intended for transportation over the Erie lines to New York assembled in order that the trains may be made up?—A. I do not believe that I can answer that question. That is an operating question of two or three railroads, and possibly the coal is assembled at several different points, all having a bearing on the shipping instructions of the coal.

Q. Can you tell us at what point the coal taken from the collieries of the Hillside Coal Company, intended for shipment to New York Harbor, is assembled in order that the different cars may be put into trains?—A. We have generally considered Hillside Junction one assembling point; but that is a matter in the control of the operating department of the railroads, and they would naturally expect to handle it to their best advantage.

Q. Who will be able to give us that information?—A. I have no objection to giving it myself by making an investigation and producing it. It is an operating condition that I have not made myself familiar with as to just the movements of the coal made by the different railroad companies.

Q. Will you ascertain the answer to this question and put it in the record?—A. I will.

Q. What are the assembling points for coal shipped from the collieries of the companies of which you are vice-president intended to reach New York Harbor over the lines of the New York, Susquehanna and Western?—A. I would prefer to secure the information as to that in the same maner.

Q. I do not find what you call the Hillside Junction on the map that we have introduced in evidence. Tell us what it is and where.—A. It is the junction of the New York, Susquehanna and Western Railroad and the Erie Railroad. It is near Moosic.

Q. From this junction coals may be moved either over the Erie tracks or over the tracks of the New York, Susquehanna and Western to New York Harbor?—A. They could be moved in either direction from that point.

Q. Does the Erie Railroad own or operate any railroad within the State of Pennsylvania?—A. Yes.

Q. Has the Erie Railroad Company at any time accepted the provisions of the constitution of Pennsylvania, so far as you are aware?—A. I can not answer that question.

Q. What does it cost the Hillside Coal and Iron Company to sell coal at New York—how much per ton?—A. I have no figures that would show the extent of tidewater coal separate from others.

Q. What is the cost generally for selling your coal?—A. I have not the information to answer that question.

Q. Can you give approximately what it is?—A. I do not believe I can.

Q. Is it 30 cents a ton?—A. I will look it up and put it in the record.

Q. I would like also to know what is the wastage per ton, as near as you can arrive at it, upon coal moving from the collieries of the Hillside Coal and Iron Company to tide between the time it is loaded on the cars at the breakers and the time it is loaded on the vessels at New York Harbor.—A. I will have to look that up.

Q. You have a general sales agent here at New York who sells your coal on commission, I believe you have said?—A. Yes; we have general sales agents.

Q. Will you put in the record what commission is paid the general sales agents—how much per ton?—A. The rate of commission is 2 per cent on the selling price of the coal. That covers all expenses up to a certain point of selling the coal. It covers the collection and guaranty of all the accounts from the date of sale, and consequently it means the use of the capital in addition to the ability to sell coal. That makes some difficulty about the selling expenses. That may be more or less dependent on what expenses they assume.

Q. In other words, if your sales agent here in New York sells a ton of coal for $5 he is entitled to a commission of 2 per cent on $5?—A. Yes.

Q. The Hillside Coal and Iron Company buys coal from The Delaware and Hudson Company?—A. It does.

Q. About how much during the last four years, on an average, has it purchased?—A. I can only approximate the tonnage from memory. Probably 1,000,000 tons, on the average, per annum during that period.

Q. And is that 1,000,000 tons purchased under contract existing between The Delaware and Hudson Company and the Hillside Coal and Iron Company, entered into July 1, 1902, and originally terminating in July, 1907?—A. The 1,000,000 per annum referred to in my answer was the approximate amount purchased under the contract during that period.

Q. Has that contract been extended?—A. The contract was extended, but its extension has expired.

Q. And no renewal made?—A. No renewal of that contract.

Q. Is there a similar agreement existing?—A. Not similar. There is an agreement between the Hillside and The Delaware and Hudson Company.

Q. Under which the Delaware and Hudson sells the Hillside coal?—A. Yes.

Q. Upon substantially the same terms as set out in this contract?—A. Substantially so as to the price and coal purchased, so far as the purchase of the coal is concerned.

Q. How long a time does the present existing contract continue, or is it to continue?—A. The agreement to purchase coal between the Hillside and the Delaware and Hudson companies is for a period of one year from April 1, 1908.

Q. How much coal does it contemplate the purchase of?—A. Five hundred thousand tons.

Q. Will you produce the contract and append it as an exhibit, and all the correspondence, if it is by correspondence, attach that?—A. Yes.

Q. The exhibit furnished showing the ownership by the Erie Railroad Company of the stock of the Hillside Coal and Iron Company shows that the railroad company owns all of the stock of the other except $1,000, and is that $1,000 nominally in the name of certain parties to make up the board of directors and really the property of the Erie; do you know?—A. It is, to the best of my recollection.

Q. Does the Erie Railroad Company own stock in any other anthracite coal company except the Hillside and Pennsylvania?—A. That is all, to the best of my belief.

Q. When did the present Erie Railroad Company acquire the stock which it holds in the Hillside Company?—A. The present Erie Railroad Company acquired its Hillside stock when it was organized, in November, 1895, acquiring such stock by operation of law as the successor to its predecessors, which had held it from 1874.

Q. From exhibits furnished us it appears that the Erie Railroad Company owns all the shares in the Pennsylvania Coal Company except $22,500. Do you know where the actual ownership of these shares is?—A. The Erie is the owner of practically all of the stock with the exception of the very few shares.

Q. Those shares have been put in the names of different parties to make up the board of directors?—A. Yes.

Q. Are you acquainted with what are called the 65 per cent contracts existing between the Hillside Company and various producers of coal?—A. In a general way, I am.

Q. Do you know whether those contracts cover the production of the collieries with reference to which they were made during their lives?—A. I believe they do.

Q. Is all the coal purchased by the Hillside Coal and Iron Company under these 65 per cent contracts mined in the Wyoming region?—A. Yes.

Q. Is all the coal purchased by the Pennsylvania Coal Company mined in the Wyoming region?—A. It is.

Q. We have been furnished with statements showing the amount of coal sold by the Hillside Coal and Iron Company to the Pennsylvania Coal Company at the mines from July, 1895, to April, 1908.

Are those purchases made by the Pennsylvania Coal Company upon the 65 per cent basis?—A. They are.

Q. Are you an officer of The Temple Iron Company?—A. I am not.

(Counsel for The Delaware and Hudson Company reserve the right to cross-examine the witness.)

(Adjourned until Wednesday, October 21, 1908, 10.30 a. m.)

Met pursuant to adjournment at New York, October 21, 1908, 10.30 a. m.

Present: The Examiner, and Messrs. McReynolds, Todd, Campbell, Moot, Warren, Opdyke, Schaperkotter, de Forest, Seager, Torrey, Jenney, Brownell, and Kerr, of counsel.

Direct examination of G. A. Richardson by Mr. McReynolds resumed.

Q. When you were on the stand last I asked you to produce the sales circulars issued by the Hillside Coal Company and the Pennsylvania Coal Company.—A. I submit the copies of circulars issued by the general sales agent of the Pennsylvania Coal Company and the Hillside Coal and Iron Company from 1904. These have been obtained at considerable trouble. It is possible more of them could have been obtained from the time they were first issued, but by telephone and telegraph and otherwise those have been obtained from the sales agents who issued them.

Q. You were asked to tell us what were the points at which anthracite coal mined in the Wyoming region was gathered in order to be put into trains destined for New York Harbor.—A. My reply, as far as I recall, was to the effect that that was a matter in the control of the operating department of the railroad and subject to change, owing to the conditions from time to time, but that I would secure that information from them and file it, and I now submit it, together with other information bearing on the same subject. It is as follows:

Location of collieries, routes, and assembly points of coal shipped from mines of the Pennsylvania Coal Company, Hillside Coal and Iron Company, and operators selling their output at their mines to these companies and The New York, Susquehanna and Western Coal Company:

PENNSYLVANIA COAL COMPANY.

All collieries are located on the Wyoming division of the Erie Railroad.

Coal from No. 14 Ewen, No. 6, No. 9, Barnum Central, and Old Forge is assembled at Avoca, and coal for both eastern and western points is ordinarily moved from Avoca to Lackawaxen over the Wyoming division. Coal for tide water and some other eastern

points, however, is sometimes moved from Hillside Junction over the New York, Susquehanna and Western Railroad.

Coal from No. 5, Gipsy, and No. 1 is assembled at Rock Junction, and coal for both eastern and western points is moved from Rock Junction to Lackawaxen over the Wyoming division.

HILLSIDE COAL AND IRON COMPANY.

Consolidated and Butler collieries are located on the Wyoming division of the Erie Railroad.

Forest City and Clifford collieries are located on the Jefferson division of the Erie Railroad.

Erie and Glenwood collieries are located on the Delaware and Hudson road.

Susquehanna washery is located on the New York, Susquehanna and Western Railroad.

Coal from Consolidated is assembled at Hillside Junction and coal for eastern points is moved from Hillside Junction over New York, Susquehanna and Western, or to Lackawaxen over the Erie and Wyoming Railroad; coal for western points is moved from Hillside Junction to Lackawaxen over Wyoming division.

Coal from Butler is assembled at Avoca. Coal for eastern and western points is ordinarily moved from Avoca to Lackawaxen over Wyoming division. Coal for eastern points, however, may be moved from Hillside Junction over New York, Susquehanna and Western Railroad.

Coal from Forest City and Clifford is assembled at Forest City and moved over Jefferson division.

Coal for western points from Erie and Glenwood is moved by Delaware and Hudson to Carbondale, where it is assembled for movement over Jefferson division. Coal for eastern points is moved by Delaware and Hudson to Winton and assembled at Rock Junction for movement over Wyoming division.

Coal from Susquehanna washery is ordinarily moved over the New York, Susquehanna and Western Railroad, but may be moved via Lackawaxen also.

COAL PURCHASED BY PENNSYLVANIA COAL COMPANY FROM HILLSIDE COAL AND IRON COMPANY AND NEW YORK, SUSQUEHANNA AND WESTERN COAL COMPANY.

Consolidated and Butler (see Hillside Company).

Richmond No. 3 is located on New York, Ontario and Western.

Coal is moved by Ontario and Western to Carbondale, where it is assembled for movement over Jefferson division.

Jermyn No. 1 and Jermyn No. 2 are located on New York, Susquehanna and Western road and coal is moved to Hillside Junction, where it is assembled. Coal for eastern points is ordinarily moved from Hillside Junction over New York, Susquehanna and Western, and coal for western points to Lackawaxen over Wyoming division. Coal for the east may, however, be moved via Lackawaxen also.

COAL PURCHASED BY HILLSIDE COAL AND IRON COMPANY.

Nay Aug, Green Ridge, Dolph, and Sterrick Creek are located on the Wyoming division of the Erie Railroad.

Northwest and Lackawanna are located on New York, Ontario and Western Railroad.

Brookside is located on New York, Susquehanna and Western Railroad.

Coal from Nay Aug, Green Ridge, Dolph, and Sterrick Creek is assembled at Rock Junction and moved to Lackawaxen over Wyoming division.

Coal from Lackawanna is moved by Ontario and Western to Carbondale, where it is assembled and moved over Jefferson division.

Coal from northwest is moved from Forest City over Jefferson division.

Coal from Brookside is ordinarily moved over New York, Susquehanna and Western Railroad, but may be moved via Lackawaxen also.

In the foregoing statement, wherever the Wyoming division is mentioned, it refers to the Erie and Wyoming Valley Railroad.

Q. You were also asked to produce some other information?—A. Yes, sir; I was to produce a copy of the agreement or correspondence between the Hillside Coal and Iron Company and The Delaware and Hudson Company, with reference to the purchase of coal from the last-mentioned company. Here it is:

"THE DELAWARE AND HUDSON COMPANY,
"OFFICE OF SECOND VICE-PRESIDENT AND GENERAL MANAGER,
"*Albany, N. Y., April 28, 1908.*

"Mr. G. A. RICHARDSON,
"*Vice-President Hillside Coal and Iron Company,*
"*11 Broadway, New York City.*

"DEAR SIR: This will confirm the understanding had at our interview on March 12.

"The Delaware and Hudson Company agrees to sell the Hillside Coal and Iron Company 500,000 tons of anthracite coal of the average product of its mines, excluding sizes below Buckwheat No. 1, to be delivered in as near as may be equal monthly installments; prices to be based on Ruley averages; coal to be delivered The Erie Railroad Company at Honesdale, Pa., the terms of payment to The Delaware and Hudson Company to be as follows:

"One dollar per ton on or before the 12th day of each month and the balance on or before the 20th day of each month for the deliveries during the preceding month. On default, the contract may be forfeited on five days' notice.

"If any additional quantities of coal are sold, the terms and conditions of such additional quantities to be subject to mutual agreement at the time of shipment. If the question is not then raised, the terms to be those outlined in this paper.

"It is understood that all sales are subject to the usual clauses as to strikes, washouts, and the effect of the Hepburn Act, and can be discontinued temporarily in case the price of coal at tide water is not over $3.50 per ton for prepared sizes.

"Your acceptance of this letter will form an agreement between our respective companies.

"Yours, truly,

"(Signed) C. S. SIMS,
"*Second Vice-President and General Manager.*

"Accepted.
"(Signed) G. A. RICHARDSON,
"*Vice-President Hillside Coal and Iron Company.*"

Q. This correspondence constitutes a modification of the agreement which was in force for a number of years prior to April, 1908, does it not?

Mr. TORREY. On behalf of The Delaware and Hudson Company I object to the question as incompetent. The witness can not construe a letter which was written by someone else.

A. It constitutes a new agreement between the Hillside Coal and Iron Company and The Delaware and Hudson Company.

Q. Prior to April, 1908, there was an agreement between the two companies, there was a contract outstanding between the two companies, with reference to the purchase of coal?—A. Yes.

Q. And it expired about the 1st of April, 1908, the old contract?—A. I think so, by limitation, on March 31, 1908.

Q. How long had that contract been in existence?—A. Since the 1st of July, 1907, to the best of my recollection.

Q. Prior to 1907 was there a contract in existence?—A. A contract extending over a period of five years, and expiring on that date.

Q. Was that five-year contract continued in force by the agreement of 1907?—A. It was extended for a further period by indorsement.

Q. And that extension expired March 31, 1908?—A. Yes.

Q. And this correspondence shows what took place at that time?—A. It does.

Q. Were you asked to produce other information?—A. I was asked with reference to the wastage of coal between the mines and the tide water. I do not recall the exact question.

Q. You were asked when on the stand before, as follows: "I would like also to know what is the wastage per ton, as near as you can arrive at it, upon coal moving from the collieries of the Hillside Coal and Iron Company to tide, between the time it is loaded on the cars at the breakers and the time it is loaded on the vessels at New York Harbor." You replied, "I will have to look that up." Have you looked that matter up, and are you prepared to answer that question?—A. The answer to that question is, that that is a subject that is always more or less in dispute. It depends largely upon the size of the coal transported, on its preparation, whether wet or dry, whether or not the shipment is in open cars, so that a part of the

load is lost in transit, and also upon the time of year, the weather conditions during which the coal is transported. Investigations which have been made show that there is a wastage of probably from a fraction of 1 per cent to something over 1 per cent.

Q. What would you think the average was from investigations which have been made, taking it throughout the year?—A. Probably 1 per cent.

Q. Who prepares the annual statements of the Hillside Coal and Iron Company and the Pennsylvania Coal Company?—A. The auditor of the company furnishes such information from month to month as the officers of the company may require.

Q. Is no annual statement of these coal companies made up showing their profit and loss and other items?—A. There are annual statements prepared of different kinds, showing the tonnage mined, the tonnage sold, and that is about all.

Q. Is no statement of their profits or losses made up?—A. Yes; that is shown in their balance sheets, made monthly or at the close of any year.

Q. Are balance sheets showing profit or loss, a statement of the company's business, made up at the end of each year?—A. They are made at the end of each month.

Q. Are those things brought together and a yearly statement made up?—A. A balance sheet at the end of any one month would constitute the balance sheet for any year's business or the twelve months ending at that time.

Q. Who can testify to these balance sheets?—A. I think I am competent to testify to them.

Q. Have you got them with you?—A. No, sir.

Q. Who is the secretary of the company who makes these statements?—A. The auditor of the company makes everything with reference to the accounts. He makes up the statements with reference to the accounts. C P. Crawford is the auditor, and his superior officer is M. P. Blauvelt, 50 Church street.

Q. Is that Mr. Crawford's address too?—A. Yes.

Q. Can you tell us how much coal was purchased by the Hillside Coal and Iron Company from The Delaware and Hudson Company during the year 1907?—A. I have not the amount in my mind. I can produce it.

Q. Will you please do so?—A. For what period, 1907?

Q. The calendar year 1907, and 1906 also. We have already been furnished with a statement showing the amount of coal purchased by the Hillside Coal and Iron Company under what are called the 65 per cent contracts. Was the coal purchased by the Hillside Coal and Iron Company from the Delaware and Hudson Company included in those statements?—A. I assume that it was. Judging from the total figures on this statement, I assume that the Delaware and Hudson tonnage is included, but I should like to verify such statement before making it.

Q. We have also been furnished with a statement showing the proportion of coal purchased under the 65 per cent contracts by the Hillside Coal and Iron Company which was shipped to tide water. Are the purchases from The Delaware and Hudson Company included in that statement?—A. I should say that the comptroller who prepared these figures was the only one competent to answer as to the statements included in these figures.

Q. These figures were prepared by the comptroller of your company whose name you have already given?—A. Yes.

Q. Do you know what becomes ultimately of the coal purchased by the Hillside Coal Company of The Delaware and Hudson Company—how much comes to tide in New York, how much goes to other points, and what points those are?—A. Do you refer to any special period of time?

Q. During the continuation of the contract of 1902, when you began to purchase from that company?—A. I can not answer that question from memory.

Q. The original contract provided that two-thirds of the coal purchased from The Delaware and Hudson Company should be delivered at Hillside Junction, at Honesdale. Was the coal delivered to Honesdale all brought to New York Harbor?—A. To the best of my recollection not all of it was brought to New York Harbor.

Q. Substantially all of it?—A. Probably the greater portion.

Q. Through what agency has that coal heretofore been sold, and is it now being sold, in New York Harbor?—A. By Ward & Olyphant, sales agents.

Q. Are Ward & Olyphant the regular sales agents of the Hillside Coal and Iron Company?—A. They are not.

Q. Do they sell coal for the Hillside Coal and Iron Company?—A. They sell the coal purchased by the Hillside Coal and Iron Company from The Delaware and Hudson Company, at tide water.

Q. They have a special agreement with reference to these sales—a special price which they charge for their services?—A. There is an agreement as to their compensation.

Q. How much is that per ton?—A. Two per cent on the selling price.

Q. Has that been the arrangement with them since your knowledge of the contract, when you first went with the Erie Company?—A. It has not been the same throughout the entire period.

Q. What was it prior to the present arrangement?—A. I believe prior to April 1, 1908, they received a stated commission of 15 cents per ton on prepared sizes, and 10 cents per ton on steam sizes.

Q. Does any coal purchased by the Hillside Coal Company from The Delaware and Hudson Company move to New York Harbor from Carbondale?—A. I think not, over the Erie Railroad.

Q. Through what machinery is settlement made by the Hillside Coal and Iron Company with The Delaware and Hudson Company for coal purchased—is it upon averages reported to Ruley, in Phila-

delphia?—A. Yes, sir; in accordance with the agreement which has been submitted.

Q. Ruley is the statistician who makes up the averages, and upon his averages settlements are made?—A. The same as with other parties from whom coal is purchased.

Q. The original contract provided that The Delaware and Hudson Company should deliver to the Hillside Company a certain amount of coal to be purchased at Honesdale, on the Erie Railroad. Over what line did that coal move from the collieries to Honesdale?—A. Over the Delaware and Hudson lines to Honesdale.

Q. When it got to Honesdale what was done with it?—A. It was transported by the Erie Railroad from Honesdale to tide water.

Q. Was any delivery of it made by the Hillside Coal Company at Honesdale?—A. The delivery at Honesdale, I assume, was made in the same manner that the coal was purchased, to the Erie tracks, at the point where the coal was purchased.

Q. Explain that answer.—A. The agreement provided that the coal purchased from The Delaware and Hudson Company would be delivered to the Erie Railroad at Honesdale, but as a matter of fact the Erie Railroad would in that case deliver the coal to the Hillside Company at tide water. The Hillside Company could not very well receive it while it was in transit.

Q. So you regarded the coal in continuous transit from the time it left the mines until it got to tide water?—A. So far as the Hillside Coal and Iron Company is concerned they had no power over it in the meantime.

Q. No delivery of this coal was made to the Hillside Coal Company at Honesdale?

Judge CAMPBELL. I object. When The Delaware and Hudson Company sold the coal and delivered it on its own tracks for transit, the initial part of a journey to tide water, it does not take much of a lawyer to determine that the coal was delivered then and there to the consignee, the Hillside Coal Company.

A. I will add to that answer that the obligation of The Delaware and Hudson Company ceased on the delivery of the coal at Honesdale.

Q. Has the Erie Railroad Company a published rate upon coal from Honesdale to New York Harbor?—A. I assume that it has not, for the reason that no coal is produced at Honesdale.

Q. Has it any published rate for carrying coal delivered to it at Honesdale to tide water at New York?—A. I think not.

Q. What is the through rate on the prepared sizes by way of the Delaware and Hudson Railroad to Honesdale, and from thence to tide water?

(Objected to.)

A. My understanding is that it is $1.60 per gross ton.

Q. I show you what purports to be the published rate sheet, and ask you to see if $1.60 is not correct?—A. Yes; that is correct, to the best of my belief.

Q. What proportion of the $1.60 goes to The Delaware and Hudson Company?

Mr. Moot. That is objected to as not competent.

Judge Campbell. I object, on behalf of the defendants I represent, on the ground that there is nothing in these relations between The Delaware and Hudson and the Hillside Coal and Iron Company and the Erie Railroad Company that can in any way properly affect the issues involved in this case, to which my clients are parties.

A. I am not competent to answer that question, inasmuch as the division of the through rates was agreed to by other representatives of the company.

Q. Who can tell us what division that is?—A. The representative of the traffic department, H. B. Warrington, 50 Church street.

Q. You do not just know what that proportion is?—A. I am not sufficiently clear as to the proportion of rates on the sizes of coal to answer that question.

Q. I am now asking about prepared sizes and the $1.60. Does not 40 cents of the $1.60 go to the Delaware and Hudson?—A. I believe it did at one period of time.

Q. Does it now?—A. Whether that or a larger percentage goes to them, or a smaller percentage, I am not prepared to say.

Q. On this coal taken under the agreement to purchase, between the Hillside Coal and Iron Company and The Delaware and Hudson Company, how is the freight paid to the Erie Company?—A. It is paid to them by the Hillside Coal and Iron Company.

Q. Speaking of the prepared sizes, do you mean that the Hillside Coal and Iron Company pays the Erie Railroad Company the full $1.60?—A. It does pay the entire freight charges on all its consignments in accordance with its terms.

Q. From the mines or from Honesdale?—A. From the mines.

Q. Do you know what the books of the Hillside Coal Company show has been the final result of this agreement to purchase from The Delaware and Hudson Company—whether a profit or otherwise?

(Objected to as immaterial.)

A. Not separately. Their reports and books would show the transactions of their business in an entirety.

Q. Do you not know what the result of this particular contract has been with The Delaware and Hudson Company—whether profitable or otherwise?—A. Not at the moment. These matters are the same as other matters in connection with the operation of the business. The operation of the entire business, matters connected with it, are looked into specially and investigated at any time there seems to be a reason for it in our minds.

Q. You have had reason to investigate as to the result of this contract with The Delaware and Hudson Company?—A. In a general way.

Q. Has it not shown losses every month in the year since you have been connected with the Erie Company?—A. Not from the monthly reports made to me.

Q. Do the monthly reports show the whole of the outgo and income?—A. The reports include practically the sales of the coal and the amount received from it, but they do not always indicate the coal purchased in that month. Possibly some is in storage and sold in latter months.

Q. Can you tell us if there is any distinction between what is called float coal New York and f. o. b. New York?—A. Float coal consists of coal loaded in cars and delivered on car floats, and f. o. b. New York is coal loaded over the docks into barges or other boats.

Q. You mean delivered in New York Harbor?—A. It is delivered over the docks on the Jersey side. F. o. b. New York is coal delivered in boats on the Jersey side in bulk.

Q. And float coal?—A. Delivered in cars on floats on the Jersey side.

Q. Do the Hillside Coal Company and the Pennsylvania Coal Company use Ruley's general average price in making settlements under what are known as 65 per cent contracts?—A. They do, and also use it in paying the miners the excess percentage awarded by the commission, which is continued, and now in force.

Q. At what point on the New Jersey side does the Erie Railroad deliver their anthracite coal?—A. F. o. b. New York at Weehawken, N. J.

Q. What is the water freight from Weehawken to the New York side?—A. To the best of my knowledge, it is 15 cents per ton.

Q. From what points in the anthracite coal region does the New York, Susquehanna and Western Railroad operate lines to New York Harbor?—A. In about the same district as the coal is produced by the Pennsylvania Coal Company and the Hillside Coal Company, as noted in previous answers.

Q. And it has operated lines from that district to New York Harbor ever since you have been connected with them?—A. Yes.

Q. And from what points in the anthracite coal region does the Erie Railroad, and has it since you have been connected with it, operate lines to New York Harbor?—A. In the same general territory.

Q. Has not a large portion of the coal purchased by the Hillside Coal and Iron Company and the Pennsylvania Coal Company since you have been connected with these concerns been shipped to New York Harbor?—A. I would not exactly express it as a large proportion, but I would modify it by saying that a considerable portion of it has.

Q. Does the Delaware and Hudson Railroad reach tide water at any point?—A. I believe not.

Q. Under this existing contract between The Delaware and Hudson Company and the Hillside Coal Company the Delaware and Hudson coal is still kept separate in New York and sold as a separate commodity under the name of that company?—A. I am not certain whether their trade name is still in use or not. That is a question that is not of any importance to the Hillside Company.

Q. The coal is still sold through the same agents who had been handling it ever since you have been connected with the Erie Company?—A. Yes.

Q. When did the Erie Railroad Company dispose of the stock which it owned in the Lehigh Valley Railroad Company?—A. I am unable to give the exact time, but as near as I can recall it was during the past year.

Q. What time during the past year? Do you mean during the year 1908?—A. To the best of my recollection during the early part of 1908.

Q. Do you know the price of anthracite coal at Buffalo?—A. I could not state it from memory.

Q. Do your companies publish any circulars showing the prices there?—A. They do. They are issued by the sales agent at Buffalo.

Q. Do the general sales agents, Williams & Peters, have control in any way of the sales of the Hillside Coal and Iron Company's output at points other than New York?—A. They do.

Q. How are the prices for these points outside of New York fixed?—A. The prices, so far as my knowledge goes, have been established for a long time, and in accordance with my previous testimony any changes or deviations of these prices are all I have concerned myself with during my period of administration.

Q. The prices have not materially changed since you have been connected with the company?—A. I believe I answered that question previously to the effect there had been some considerable changes in the prices of steam sizes of coal.

Q. I am asking about New York coal.—A. The same is true.

Q. There have been some changes in the smaller sizes, but the prices of prepared sizes have been substantially the same since you have been connected with the company, both at New York and other points?—A. There may have been some changes at some places, but I do not know that there had been substantial changes during that period.

Q. Are prices of coal at points along the lines of the Erie and the New York, Susquehanna and Western railroads, between the mines and points in New York Harbor, more or less than harbor points?—A. I can not answer that question from memory. The prices vary at a great many places, owing to conditions, but how they were originally established I have no knowledge. I should assume that the coal is sold the same as any other commodity, however, and that trade conditions would establish and regulate the prices, the theory being that the sales agents are supposed to get as much for our coal as any other company does for coals of a similar character.

Q. Do you sell coal to be consumed or used at points along the Jersey shore on the New York Harbor?—A. There are possibly some sales in Hoboken and Weehawken.

Q. Are the prices for coal to be used at those points the same as prices for coal f. o. b. at those points?—A. I can not answer that

question. The prices of coal involve possibly hundreds if not thousands of points, and I have not such prices in my mind for one place any more than another.

Cross-examination by Mr. MOOT:

Q. With what railroads were you connected before you became connected with the Erie?—A. The Baltimore and Ohio.

Q. For about how many years?—A. About 15.

Q. Was that your first railroad experience on that railway?—A. No, sir.

Q. With what railroad were you before that?—A. The Cincinnati, Hamilton and Dayton and the Big Four Company.

Q. Your first experience with the Erie Railroad began May 1, 1901?—A. It did.

Q. And your official connection with that railroad as vice-president began, if I remember correctly, January 1, 1904?—A. Yes, sir; my connection in my present capacity. I was assistant to the president and secretary during the year 1903.

Q. During the time you were assistant to the president did I understand you correctly to say that someone else had charge of the coal business—the coal interests?—A. Either the president or some vice-president of the company had charge during that period.

Q. You did not have charge?—A. I did not.

Q. Do the New York, Susquehanna and Western and the Erie Railroad tracks reach the same collieries in this coal region?—A. They do not.

Q. Can you tell me what collieries are reached by the Erie, and the Wyoming, or what you call the Wyoming division of the Erie, now operated by the Erie—just what collieries are reached by them?—A. Practically all of the collieries operated by both the Pennsylvania Coal Company and the Hillside Coal and Iron Company, with the exception of the two Hillside collieries which are located on the Delaware and Hudson lines.

Q. The two Hillside collieries located on the Delaware and Hudson lines are what ones?—A. The Glenwood and Erie.

Q. Near what place?—A. Carbondale. To continue my answer, with the exception of two, which are located on the Delaware and Hudson line, and two collieries located on the Jefferson branch of the Erie railroad.

Q. The New York, Susquehanna and Western—does it reach any collieries?—A. It reaches what are known as the Jermyn collieries.

Q. How many are there of those?—A. There is one breaker and one washery.

Q. Does that railway reach any other of these collieries?—A. It does not.

Q. Do you know whether it reaches any other collieries in that region?—A. It does. Through a trackage arrangement it reaches the Ridgewood colliery, by trackage arrangement over the Central Railroad of New Jersey.

Q. Does the Delaware and Hudson reach any of the collieries of the Hillside or the Pennsylvania Coal Company except those you have named?—A. It does not.

Q. Generally speaking, in that region do the railways reach the same collieries or does each railway reach certain collieries which are reached by no other?—A. I should say that the latter is generally true.

Q. That each railway reaches certain collieries reached by no other?—A. Yes.

Q. What railway reaches the Dolph colliery—does the Susquehanna reach that?—A. I am uncertain as to the exact ownership of the track between what is known as the "Moosic Mountain" road and the colliery, but the Erie owns and controls the Moosic Mountain road over which any coal from the Dolph colliery must come.

Q. And the Mount Jessup?—A. I am not familiar with the conditions of Mount Jessup. I have no recollection of having any business transactions with them.

Q. And the Lackawanna Coal Company?—A. The Lackawanna Coal Company's outlet, I believe, is the New York, Ontario and Western Railway.

Q. Do you know whether any other line reaches that?—A. I think the Lackawanna reaches it.

Q. Please notice whether there is any line of the Susquehanna that reaches that.—A. The map indicates that the Winton branch of the New York, Susquehanna and Western reaches it.

Q. So that that is a colliery that is an exception to the general rule that a colliery is only reached by some single railway line?—A. That appears to be the case.

Q. When you speak of the Susquehanna going there do you mean the Susquehanna or the Wilkes-Barre and Eastern?—A. The Wilkes-Barre and Eastern is supposed to embrace all that system of road through the mining district to Stroudsburg, in connection with the New York and Susquehanna Railroad.

Q. When you have been speaking of the Susquehanna to Mr. McReynolds and to me as reaching this region, I take it what you mean is that it is reached, as is stated, by the Wilkes-Barre and Eastern?—A. The Wilkes-Barre and Eastern, the operated company.

Q. That is, these tracks are operated by the Susquehanna?—A. The New York, Susquehanna and Western.

Q. Do you know whether the Wilkes-Barre and Eastern files tariffs or not?—A. That is not within my province, but my general observation is that any reference to the New York, Susquehanna and Western Railroad is made in connection with the Wilkes-Barre and Eastern on any traffic which is common to both lines.

Q. That is, where a tariff is filed that is a tariff covering points on the Susquehanna east of Stroudsburg and on the Wilkes-Barre from any points to Stroudsburg it is filed in the name of the Susquehanna and Western?—A. I assume that to be the case.

Q. That is your best information and recollection?—A. I believe the tariffs are in evidence here.

Q. Have you ever gone into the matter to see what the arrangement is by virtue of which the Susquehanna operates at all over the Wilkes-Barre and Eastern?—A. Nothing more than my understanding that they own or control the entire capital stock of the company.

Q. But whether there is any lease or trackage agreement or anything more than the stock ownership relation you do not know?—A. I do not.

Q. Stroudsburg is where—is Stroudsburg at some point on the state line?—A. It is some considerable distance from the other terminus of the Wilkes-Barre and Eastern road.

Q. Is it a point on the line between Pennsylvania and New Jersey, do you know?—A. I do not. I can see it very clearly, but I do not know how I can describe the location of it.

Q. That is the eastern terminus of the Wilkes-Barre and Eastern, as it is called?—A. It is.

Q. And the western terminus of the New York, Susquehanna and Western, as it is called?—A. Yes.

Q. In this statement which you filed of record this morning as to the assembling points, does that take into account coal assembled to go west instead of going to tide water?—A. It covers the entire situation in that region as it exists to-day, relative to the amount of coal from all collieries in which these respective companies are interested, to all points.

Q. When your coal goes west what is its common route, the coal of these companies that you are operating?—A. For coal mined by the Hillside Coal and Iron Company and the Pennsylvania Company, on the line of the Erie, and the Wyoming Valley Railroad Company, it is moved by way of Lackawaxen; but for coal mined at its operations on the Delaware and Hudson and on the Jefferson branch of the Erie Railroad it is moved over the Jefferson branch to a point known as the junction, which is a connection with the main line of the Erie.

Q. Has any of your western coal been moved over the Delaware and Hudson itself, or any of its lines, to any extent?—A. Yes; a very large portion of it has at times been moved by the Delaware and Hudson Company between the point of production and Carbondale.

Q. Because that is a shorter and better route?—A. A shorter route.

Q. Moved under some arrangements by which you pay them what, trackage or freight, or what?—A. We pay them what is known as a trackage rate, although it involves the use of the track and transportation over the tracks.

Q. In your own cars and by your own engines?—A. Yes; in our own cars, in the Erie Company's own cars, and by the Delaware and Hudson's engines.

Q. Take this coal of the Delaware and Hudson that the Hillside Company buys of the Delaware and Hudson, and have been buying of the Delaware and Hudson under various contracts since 1902, that

coal is entirely produced in the Delaware and Hudson collieries?—A. Yes.

Q. That is, collieries located on the Delaware and Hudson line?—A. That is my information.

Q. Are any of these collieries reached by the Erie lines, or the Jefferson branch of the Erie, the Wyoming Valley, or the Wilkes-Barre and Eastern, as far as you know?—A. I think not.

Q. Who furnishes the cars into which that coal is loaded at the breaker's mouth, if you know?—A. The understanding is that the Erie Railroad will furnish equipment necessary to move the coal purchased.

Q. By "equipment necessary" you mean simply the cars, or the cars and engines both?—A. The cars.

Q. And then when the cars are located at the breaker's mouth and loaded they are moved away to the points where you deliver to the Erie by the engines and crews of the Delaware and Hudson?—A. They are.

Q. And for the service in moving, switching, and so forth, getting to the points where they are turned over to the Erie, whatever rate is paid the Delaware and Hudson out of the $1.60 that the Erie charges to tide water is paid for the use of their tracks?—A. I understand the Delaware and Hudson is paid a portion of the through rate of freight to compensate them for receiving the empty cars, placing them at their collieries, and moving the loaded cars after they are loaded to the Erie Railroad.

Q. For the use of their tracks, and so forth?—A. For the use of their entire facilities.

Q. The traffic department will know just how much it is?—A. I presume the traffic department has agreed upon a division of the rate with them the same as any other company with which we have connections for the interchange of traffic.

Q. All the Erie has to do from the time these loaded cars are brought to the Erie at Honesdale, or Hillside Junction, wherever it may be, is to draw these loaded cars to tide water if they come east.—A. The coal is practically delivered in sufficient quantities to make a train load.

Q. This Hillside Junction is a point nearer Moosic than any other point?—A. Yes.

Q. Hillside Junction is simply a junction point of some railway tracks and not a village or anything of that kind?—A. That is true.

Q. I see that under this original contract between the Delaware and Hudson and the Hillside it is provided that the coal is to be delivered by the Delaware and Hudson to the Hillside at the breaker's mouth. In your operation of these coal companies, and according to your best information and observation, was it so delivered from the time you took charge?—A. I assume it was, inasmuch as the coal is paid for at the mine weights and on the inspection at the mines.

Q. And the freights are paid to the mines, are they not, by the Hillside?—A. The Hillside pays the Erie the entire freight charge,

the through rate for the transportation of the coal from the mines to tide water.

Q. You have the fact that it is taken on the mine inspection, on the mine weight, and the freight to the mines is paid by the Hillside?—A. The same as for coal purchased from any other party with whom the company has a contract.

Q. Sixty-five per cent contract?—A. Yes.

Q. Has that been the case from the time you took charge down to to-day, under these various contracts with the Delaware and Hudson?—A. It has.

Q. So that if any loss occurs, any insurance was to be obtained, or anything of that kind, from the time the coal left the breaker's mouth the risk would be a risk by the Hillside Company?—A. It would to any extent beyon[illegible]holding the transportation company liable for accident and losses sustained through accidents.

Q. The Hillside Company would be liable to go back to the transportation company for anything that it was responsible for by reason of negligence?—A. The same as any other shipper.

Q. Do you find there is any competition in this coal business?—A. Yes; I should say there is a great deal of competition.

Q. Of what kind or kinds?—A. I should think that the competition was more in the quality and the preparation of the coal than in prices. Our sales agents are working under general instructions to dispose of our product and get as much for it as anyone else could under similar circumstances and for a similar commodity.

Q. Those are their general instructions?—A. They are.

Q. When you said that they consulted you from time to time with reference to prices you meant if those instructions were to be departed from they consulted you before departing from them?—A. Not especially in that respect. I had more in mind if they had to recommend any deviation from the established prices that it should be brought to me.

Q. When you say "established prices," what do you mean, prevailing market prices?—A. The prevailing price has been unchanged for a long time, and the general assumption is if they could get more than that for their coal they would do so and would not take less if they could avoid it.

Q. You spoke of competition as to quality and preparation. Illustrate what you mean, if you can.—A. As a general illustration, if a consumer has coal to purchase, he makes inquiry from different companies as to the prices, and finds that they are selling, for instance, at practically the same prices; then he will look to buy the best article he can for the same money, and in that way any coal company's sales of their article would be materially reduced if they do not produce an article as good or better than other companies.

Q. To meet this competition in quality, are the companies put to any expense or required to make any change from time to time?—A. Yes; any improvement which can be made by improved methods, either by improved machinery and additional manual labor, and re-

moving more impurities from the coal, and sized up probably more evenly.

Q. Give, from your own experience, in meeting the competition of other companies in steam sizes of coal and the quality of steam sizes sold, your experience when you first took charge of the companies as an illustration.—A. Our sales agents called my attention to the situation at that time, which indicated that we were accumulating a large quantity of steam sizes of coal and that the sizes and preparation of this coal did not equal that produced by other companies, and gave it to me as their opinion that if we did not improve the size and quality of our coal we would be unable to sell the production, which they were expected to do.

Q. What did you do?—A. We made changes which in our opinion brought our production up to as good a quality as that produced by other companies.

Q. About when did you make those changes?—A. I am unable to say, but I should say probably during the year 1904, the first year I assumed jurisdiction over these companies.

Q. About how much did it cost you?—A. I have clearly in mind that the changes made in the steam sizes involved a loss of earnings to the coal companies which they would have received for their coal if they could have sold it as formerly prepared, to the amount of about $300,000.

Q. So that the statements of your coal companies for that year, instead of showing a profit, as they should have done, would show a difference of that amount in the way of loss of profit, or a loss?—A. They would have a greater profit to the extent of $300,000 had they been able to sell the coal as prepared prior to that time.

Q. They could make the customary market prices on it, but they could not sell it?—A. That is true. There was an accumulation due to that.

Q. Since you have made these changes to make your steam sizes better, how do the steam sizes move off?—A. Owing to the increased demand, presumably by the growth of population and industries, the companies have been able to sell, within a reasonable period of time, their product of steam sizes. It is necessary, however, during the part of each year to stock those sizes of coal, together with other sizes, for a considerable length of time, to wait market demand.

Q. What do you mean by stocking?—A. Unloading the coal and holding it in storage until the market conditions demand it.

Q. You have places where you do that?—A. Yes.

Q. That adds to the expense of the business?—A. Very considerably.

Q. If you could induce the market to buy this coal during the dull season of the year, when the weather is warm and coal is not in demand, by making a discount, then you would not have to stock and be put to this extra expense in handling your coal?—A. It would be beneficial to all parties if at any rate of discount they could be induced to take their coal at even quantities throughout the year. It

would be better for the producers of coal and the railroad companies transporting it.

Q. Why?—A. For the reason that if coal is not mined and transported until it is required for use, that, naturally, is during a season of the year that is, from climatic causes, the most difficult to conduct transportation; and it would be, in my opinion, absolutely impossible for railroad companies to even transport that tonnage during a few months of the year, at the time the coal is consumed; it would be physically impossible, and it goes without saying that it would be physically impossible for the coal companies to mine that quantity during that period.

Q. How is it with reference to the men who work in the mines, as to steady employment?—A. They would be out of employment practically during the time that the consumers discontinue the use of coal for heating purposes, during the summer, which would probably extend from April to September, generally.

Q. These discounts of 50 cents during April, 40 cents during May, 30 cents during June, 20 cents during July, 10 cents during August, which are made on prepared sizes, if I understand correctly, are discounts the object of which is to distribute this coal more evenly over the year and furnish steady employment to your men, and avoid this stocking?—A. I have no doubt that is the case, and I think it was a well-conceived idea.

Q. You think it does work in that direction?—A. To a large extent. Probably it would be better for the consumer and producer both if it produced more results along the same line.

Q. It has been mentioned here that when the coal strike commission, which terminated April 1, 1906, that during that time there was some sort of a suspension lasting for a few weeks, during which the men were making other or different demands upon the companies, also that during the month of April of that year the usual discount of 50 cents was not given to the trade. Do you know anything about that?—A. My recollection is it was suspended for a month or two, the conditions being different.

Q. And then the usual discount was given from month to month?—A. Yes, sir.

Q. After this matter was settled with the men?—A. Yes, sir.

Q. And this arrangement on the basis of the award of the coal strike commission was continued from April 1, 1906, following?—A. It was.

Q. And has continued to the present time?—A. It has.

Q. And does continue until when?—A. It expires April 1, 1909.

Q. And do you know whether the men are making already new demands or not?—A. My information is to the effect that they have prepared demands which are even harder than at any previous time.

Q. This suspension that took place from April 1, 1906, until the 1st of May or a little later, of the same year, was a suspension of work by the miners, pending the negotiations with the companies, to see if the companies would not give them something better than what

they were receiving under the award of the strike commission?—A. Absolutely my instructions were to have the whistles blown at all collieries on the morning that this suspension was supposed to take place, and if enough men reported for work at any of these operations to go on with the operation, regardless of the action of the other men; and during the period of the so-called suspension, by concentrating some few of the men that reported for work, we were able to operate one or two operations in sort of a way and produced some coal, but it was very expensive.

Q. So that with the exception of one or two collieries operated as stated, you were practically unable to operate any of your collieries during that time?—A. It may have been a practical suspension during that period.

Q. Of course, during that time, were you at any expense in these collieries?—A. Our experience taught us it was necessary to incur a great deal of expense prior to the suspension and during the suspension.

Q. In what way?—A. We found it necessary to protect an operation by erecting a high fence all around it, so that the men who choose to work would not be interfered with from the outside; and of course the pumping out of the mines had to be continued, buildings had to be watched, and in numerous ways the expenses continued without any benefits accruing.

Q. I understood you that these men finally went back on the basis of the award of the strike commission, and they will continue on that basis until the 1st of next April.—A. My recollection is that the employers suggested and offered a continuation on the same basis prior to the time they suspended work, but they did not accept that proposition until some time afterwards, and it was agreed that the same terms, the same agreement, should continue for a further period of three years.

Q. That would make it expire on the 1st of next April?—A. Yes.

Q. As to which they are making more extensive demands than ever?—A. From general information I have received they are making demands for both an increased percentage of wages and decrease in the number of hours of work constituting a day, and also some very harsh terms as to who you shall employ, and who shall interpret the terms of employment, and so forth.

Q. In other words they are no longer willing to stand by the award made by the strike commission, according to your information, but want something a good deal better?—A. That is as I understand the meaning of their demands.

Q. Do you know whether this condition, and the way it was finally settled in April or May, 1906, was confined to the coal companies you represent or whether it was practically the same in the entire anthracite coal mining region?—A. I understand it was the same with all companies operating in that same region.

Q. And finally settled in the same way?—A. Yes, sir.

Q. In making prices, if your prices go above, on prepared sizes, $4.50 per ton at tide water, as I understand it under the award of the commission, there is what they call a sliding scale of increase to the miners, so that they get a certain percentage or proportion of what is received above $4.50?—A. That is true.

Q. Do you know about how many millions of dollars a year the men receive under the sliding scale of award, on that basis, or have not you looked into that?—A. I have not, but I judge the amount is very considerable.

Q. Do you know how much these companies alone pay on that sliding scale, on the basis of Mr. Ruley's figures, or have you not any figures for that?—A. I have the figures, but I have not them in my mind, not looking at them very frequently. These are matters of record in our office.

Q. On this table of prices, and the figures, and all that, furnished to the Government by Mr. Ruley, and put in evidence by the Government, I see that when you come to the steam sizes of the various companies, that the steam sizes of the various companies differ as much sometimes as 25 cents a ton on the average sizes. I see also that the steam sizes of the same company differ a good many cents a ton at different times of the year sometimes. Can you tell me why there was this large difference in the prices of the steam sizes?—A. I assume it is a difference in the quality of the coal, and also influenced by the law of supply and demand.

Q. Illustrate, if you can, what you mean by the law of supply and demand as applied to this?—A. I can only say in a general way that if our production of any one size of steam coal was not sufficient to meet the demand for that steam size, I would expect our sales agent to get a higher price for it, because it is my general opinion that prices are all too low at the present; but we are helpless in increasing them in a general way on account of the competition of bituminous coal, which is probably a better steam-producing coal than anthracite.

Q. And so understood generally?—A. Yes.

Q. As to all the steam sizes of anthracite which you sell, which, according to these figures, seem to be for the whole region, 40 per cent of steam, I understand all you can get for that is what you can get for it in competition with bituminous coal?—A. Practically so.

Q. And, then, in addition to that, is it true that if one of your companies has accumulated at one of these stocking places, or somewhere else, steam sizes for which it has no market, that those are sometimes thrown on the market at a reduced price in order to market them, or don't you know about that?—A. That has not been necessary, so far as the companies I represent are concerned, for some time.

Q. Do you know whether you have had to throw any of your steam sizes on the market in that way to market it during your administration?—A. I do not recall such a time, one of the reasons being that I would dislike very much to increase an already large loss.

Q. In other words, there is a loss on these steam sizes?—A. In the general production of coal this is a necessary evil, and consequently

the steam sizes of coal ought to be disposed of, for business reasons, for anything we can get out of them to reduce your general cost.

Q. In other words, when you produce coal you have to produce steam sizes?—A. An illustration would be that there is not a ton of prepared coal produced but what carries really a percentage of what is called steam sizes or small sizes. It can not be helped, and everything is concentrated on preventing that loss or reducing it.

Q. If you should sell the prepared sizes and put the steam sizes in the culm bank, then you would have to sell the prepared sizes at a much larger price, with labor as it is to-day, in order to operate your mines at all?—A. To the extent of what we get for the steam sizes now, or more?

Q. And your prices, without going into just what your rates are, generally speaking, your rates on steam sizes are lower than your rates on prepared sizes?—A. They necessarily must be.

Q. You do not have to switch and move your steam sizes about as much as prepared sizes to keep them where they preserve their identity for purchasers?—A. No.

Q. So that the prepared sizes are in fact more expensive, generally speaking, and more expensive to move and handle at terminals than steam sizes are?—A. Much more so.

Q. Are your steam sizes sold in a retail way generally, or sold in a wholesale way, large quantities or tonnages at a time, under a time contract, to some purchaser or to some parties, to the same purchaser and same party?—A. We probably would have a contract in large quantities for some manufacturing purpose.

Q. Take a contract for 100,000 tons of steam sizes, 1 cent a ton with the $1,000 on 100,000 tons. According to your experience with the sales agents, about how many cents a ton is it necessary to shade the price to get a big contract with a desirable customer, when things are depressed as they have been during the past year, and it may be an object to market the product? About how quick does he begin to see money in the transaction?—A. It depends something on the quality of the coal. If he thought he was getting probably a coal worth 15 cents more a ton than some one else's coal, at the same price, he would probably make the contract, because he would depend on the results secured on it for the profit.

Mr. TORREY. I object to the testimony of the witness as far as it relates to the points of delivery of coal by the Hillside Company and the Delaware and Hudson, as incompetent, in that it involves a legal conclusion and the construction of a written instrument.

(Adjourned until 2.10 o'clock p. m.)

(2.10 o'clock p. m.)

Cross-examination of G. A. RICHARDSON by Mr. MOOT resumed:

Q. Have you yourself had any occasion to observe one way or the other as to whether the quality of the prepared sizes of coal as, we

will say, the red ash, or Lyken's Valley, or some other varieties, and aside from the staple variety produced, makes any difference in the price at which it is sold in the market?—A. I understand that a superior article of coal demands a higher price than an inferior one.

Q. It brings it in the market?—A. Yes.

Q. Without regard to whether the man he is dealing with owned the mine or purchased it, whether the Lehigh or the Erie transported it, whether it was an independent mine, or whether he was selling under a contract?—A. I have been told by different people that if a man wants some superior article of coal he does not stand particularly on the price; he is willing to pay anything necessary to get it.

Q. Your own experience then is not the thing you rely on, but rather the information you get in a general way in your position?—A. To some extent from my own experience.

Q. Do you know whether the Susquehanna Coal Company operates any colliery or not?—A. It does not.

Q. So that what you had reference to in your testimony about its operation had reference rather to leasing operations by it?—A. The New York, Susquehanna and Western Coal Company; any reference I might make to the Susquehanna Coal Company should mean the New York, Susquehanna and Western Coal Company.

Q. Please add what its operation was that you had in mind in answer to counsel.—A. The New York, Susquehanna and Western Coal Company is the owner of the fee of some coal lands, it is the lessee of others, and its operations are practically confined to leasing those lands to coal and other companies who pay them a royalty for them. They do not conduct a business of operating coal mines or selling coal.

Q. You spoke of Ward & Olyphant as the agents through whom the Delaware and Hudson coal is sold. As I observe by looking at the first of the Delaware and Hudson contracts in evidence, there was a provision made there for their preserving the identity of their coal trade-mark, I infer so that when the contract expires if they choose to they could resume their business and have their customers and agents approximately intact. You did not make that contract in 1902?—A. I did not.

Q. So that you do not know what the object was with which these provisions were inserted in the contract?—A. Not of my own knowledge.

Q. But Ward & Olyphant have continued to sell the coal of the company?—A. They have.

Q. Whether they have done it under the trade-mark or in a way which would enable the company to resume its business and supply its customers in the same way if you did not sell their coal, you do not know?—A. There is no obligation on our part under the agreement to retain the trade-mark on that coal in this market.

Q. Whether Ward & Olyphant in making their sales sell it under such trade-marks or in such a manner?—A. I have generally understood them to be.

Q. So that when your contract expires, if the Delaware and Hudson wishes to resume its business it will have its own customers?—A. The trade-mark, regardless of any changed conditions now, would be carried forward; in other words, it is known as Delaware and Hudson coal, and is so sold.

Q. You say they are paid 2 per cent for making those sales?—A. As their commission.

Q. Is the same commission made to Williams & Peters, who sell the remaining coal of the Hillside and Pennsylvania companies?—A. Precisely.

Q. Do they guarantee collections also?—A. They do.

Q. So that the terms, if I understand correctly, are the same, 2 per cent for selling, with a guaranty of collection?—A. The arrangement is on the same basis exactly.

Q. Do you have to wait in either case for the coal which Williams & Peters are selling, and for Ward & Olyphant for the coal they sell; do you have to wait until the collections are actually made, or do you have a time for settlement of your tonnages, when the cash must be paid in, without regard to when the customer pays for the coal?—A. We have a time for the payment to us for the selling price of the coal, and there never has been a question of either company that they have been late one day in their payments, and that is within thirty days of the time that the order is given to ship the coal whether the consignees receive it, I presume, or not, or whether they would have to wait for their collection.

Q. Within thirty days from the time Williams & Peters give their order for the coal you receive payment for the coal, without regard to whether they have or have not received it?—A. That is it.

Q. That is true also of Ward & Olyphant?—A. That is true also for them.

Redirect examination by Mr. McReynolds:

Q. Do I understand you to go into the record as saying that you do not know whether the result of the contract commencing in 1902 and continuing on to the present time, between the Hillside Company and the Delaware and Hudson, has been profitable or unprofitable to the Hillside Company?—A. You are correct in so understanding me for that period of time. I look at the operations of the company, as a general thing, in the whole, and when I first assumed my office, so far as the Delaware and Hudson contract is concerned, it was in existence; I had not been a party to the making of it, and my whole duty was to execute it, whether it was a good contract or a bad contract. I had no occasion to look into matters of that kind, any more than I would have to know about other matters, to no greater extent than I would numerous questions.

Q. Who renewed that contract last April?—A. It was not renewed last April. A new contract was made last April.

Q. Who made that contract?—A. I did.

Q. You did not at the time undertake to investigate whether the old contract was making money or losing?—A. The new contract was not made on the same basis as the old one.

Q. What was the difference?—A. A difference in the restrictions as to who should sell the coal, or anything of that kind.

Q. Has the new contract been making money for the Hillside Company?—A. I could not answer that question.

Q. You have not investigated that?—A. I have not from month to month. I considered this a contract on which we might lose a certain amount of money, and yet it might be a valuable one to the Hillside Company, because it increases their business, increases their tonnage, increases their prestige, and puts them in a better position in the market.

Q. The Hillside Coal Company pays, under the contract now existing, 65 per cent of the tide-water price for the coal it gets from The Delaware and Hudson Company?—A. It does.

Q. What is the price of prepared sizes to-day at tide water for the Delaware and Hudson coal?—A. The average price, I should judge, was a little less than $5 per ton f. o. b.

Q. Sixty-five per cent of the $5 would be how much?—A. Sixty-five per cent of $5 would be $3.25, I believe.

Q. You pay The Delaware and Hudson Company $3.25?—A. As a matter of fact we pay, I should suppose, from $3.20 to $3.25 per ton during the months of the year that the average price is $5 f. o. b. tide water.

Q. And what is the freight?—A. $1.60 a gross ton.

Q. The $3.25 and $1.60 freight make how much?—A. I presume you make it read $4.85.

Q. You paid 2 per cent for selling the coal?—A. Two per cent.

Q. How much is that? Ten cents a ton, is it not?—A. I believe the average cost of selling on that basis for our coal to be 8 cents.

Q. Two per cent on prepared sizes?—A. Two per cent on $4.85 would be 9.7 cents.

Q. You paid 2 per cent on the selling price of the coal?—A. Yes.

Q. The selling price is $5?—A. Yes.

Q. That is 10 cents?—A. If $5, then 10 cents is paid for its sale.

Q. How much is the wastage?—A. That is a hard question to answer.

Q. It is about 1 per cent?—A. I would not say it is 1 per cent of the Delaware and Hudson production.

Q. When coal is $4.50 during the month of April does not every ton of coal that is shipped under the Delaware and Hudson contract, of prepared sizes, and sold under the conditions you have narrated, net you a loss necessarily?—A. I can not calculate all of these things in my head. I believe it would show a net loss on the transaction during the period we sell it at $4.50 a ton.

Q. So that the result is that in no month during the year is it possible for you to make any profit, and during the months including

April and July, inclusive, every ton nets you a loss?—A. I would not say that, because there are operations of boat lines and other conditions where there might be some profit and some loss. I am not prepared to say which it is.

Q. Are the prices in New York Harbor for the Delaware and Hudson coal about the same that you get for the other coal sold by the Hillside Company?—A. I think about the same.

Q. And those prices have been for a long time published at $5 for the most of the year, and commencing in April at $4.50 a ton?—A. Yes.

Q. Are the prices for the coal secured at Buffalo about the same as secured by the Hillside Coal Company?—A. There is none of the coal shipped to Buffalo that I know of.

Q. All the stock of the Wilkes-Barre and Eastern Railroad Company is owned by the New York, Susquehanna and Western?—A. Either owned or controlled.

Q. The officers of the two companies are the same?—A. Yes; I think in all cases.

Q. You stated to us that the tracks of the New York, Susquehanna and Western and the Erie Railroad system came together at Hillside Junction. Look at the map and tell us at what other points in the anthracite region the tracks of the New York, Susquehanna and Western and the Erie Railroad system come together.—A. I do not discover that they come in contact at any other point.

Q. The tracks owned or controlled by the New York, Susquehanna and Western and those controlled or operated by the Erie, you do not discover that they come together at any place beside Hillside Junction?—A. That is the only connection, I believe.

Q. Do you know where the Jefferson Road is located?—A. It extends from Carbondale to what is known as Jefferson Junction, a connection with the Erie Railroad, and has a branch also from Honesdale down to Hawley.

Q. Are the tracks of that railroad company operated by the Erie?—A. They are.

Q. Under what sort of an arrangement?—A. By ownership of the capital stock, and by lease also, I think.

Q. What percentage of the capacity of the Hillside Coal Company to produce coal has been reached during the years 1907 and 1908?—A. I have made no calculation of that kind.

Q. Have those mines been worked to their capacity, or has work been suspended from time to time?—A. They have practically been worked to their capacity, dependent upon the supply of railroad cars, and dependent on the suspension of certain collieries for repairs for certain periods.

Q. There has been no idle time in 1907 or 1908 because you were not able to sell the coal which you could get out?—A. Not for that reason. There has been some idleness during the past year for all of these companies, due to the principal fact of a congestion on all railroads; the coal being slower to dispose of during existing market

conditions it congests on the railroad. One reason of suspension was that the docks at the head of the lakes were full and could not take their usual quantity of coal. That cut off one outlet, and the railroad was congested with the coal; it could not unload as fast at the storage point as would have been necessary.

Q. I asked you earlier what the water freight was from Weehawken, and you said 15 cents. What is the marine freight from Edgewater to the same place?—A. I am unable to answer that question, whether it is the same or not.

SAMUEL T. PETERS, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. What is your residence and occupation?—A. Wholesale coal dealer.

Q. Where?—A. At the head office, No. 1 Broadway.

Q. What is your connection with the Hillside Coal and Iron Company and the Pennsylvania Coal Company?—A. We handle their product on commission.

Q. What is the general nature of your employment? Have you an exclusive agency with them?—A. To the best of my knowledge and belief.

Q. You are the exclusive sales agents for the coals of the Hillside Coal Company and the Pennsylvania Coal Company?—A. Of the Hillside Coal Company and the Pennsylvania Coal Company.

Q. And it is your duty and right to sell all the coal either mined or purchased by those companies?—A. The only exception is the coal purchased by the Hillside Coal and Iron Company from The Delaware and Hudson Company.

Q. How long have you been the sales agent for the Hillside Coal Company and the Pennsylvania Coal Company?—A. The Hillside Coal and Iron Company, I think, dates back over twenty years.

Q. And the Pennsylvania Company?—A. The Pennsylvania Company seven or eight years, I think, from the time the Erie Company took the company over.

Q. Are you in charge of the sales of the coals of these companies in other markets as well as New York markets?—A. All markets.

Q. And it has been testified to by Mr. Richardson that your compensation for these sales is 2 per cent on the selling price.—A. On the absolute sales prices. We make no mine prices. Our prices are all delivery prices at points of destination, tide water, or Buffalo. It covers the full amount at point of destination.

Q. How much coal do you sell for these two companies in the New York markets?—A. I have not had them separated at all. I imagine in the neighborhood of 2½ million tons.

Q. How are the prices for that coal made? Who establishes them?—A. There has been a price existing for the last several years. It has varied very little.

Q. What do you mean by "the last several years?"—A. I think the last seven or eight years it has been practically the same prices each spring.

Q. Each spring you publish a circular?—A. Yes.

Q. What does that circular show?—A. Prices free on board either New York or Buffalo.

Q. Those prices for the prepared sizes during the last seven or eight years have been what?—A. The range of prepared sizes would start in the spring at $4.50 at tide water and advancing 10 cents a ton, and the same corresponding difference has been made at Buffalo.

Q. You start on the 1st of April on prepared sizes at $4.50 a ton?—A. Yes.

Q. That is increased 10 cents each month until it reaches $5?—A. Yes.

Q. And that is continued until the 1st of the following April?—A. Yes; that is, in so far as New York Harbor is concerned. There is a different price for Buffalo, of which you have the schedule there, but it is the same relative advance in the market; the price of coal at Buffalo is higher than New York.

Q. How much higher are the prices at Buffalo than New York?—A. I think it rules 50 cents a ton.

Q. And the same reductions are made for April and the succeeding months?—A. Yes; the same reductions are made for April and the succeeding months.

Q. In other words, when coal is $4.50 in New York it is $5 in Buffalo?—A. Yes.

Q. Those prices are announced on the 1st of April of each year for the twelve succeeding months?—A. For the last two years. Prior to that we used to send out circulars every month, but in order to save expense we have not continued it.

Q. Were you consulted when those prices were fixed at $4.50?—A. I really do not remember that I was in any way, manner, or shape.

Q. Who are the other large sellers of coal in the New York market?—A. All of the initial companies—the Philadelphia and Reading, the Lehigh Valley, the Lehigh and Wilkes-Barre, the Delaware, Lackawanna and Western, and the Lehigh Coal and Navigation.

Q. What have been their prices for coal in New York, if you remember?—A. They have been practically the same, I think.

Q. During the last seven or eight years?—A. Yes.

Q. Commencing at $4.50 and increasing each month up to $5, and there they have remained during the remainder of the year?—A. Yes.

Q. In fact, on the prepared sizes of coal there has been substantially no change f. o. b. in the last two years by any of your companies?—A. That is practically so.

Q. And are their prices the same at Buffalo?—A. I think they are practically the same on the coal that reaches that point.

Q. The average prices that are made up upon the total sales of various companies have been put in evidence. They show some slight variation. Tell us whether reclamations are sometimes made because coal does not quite come up to grade, or because it is wet, or for some other reason which in a measure affects the total receipts?—A. I think that is absolutely so.

Q. You have no authority, have you, to reduce the price to customers on prepared sizes of coal?—A. Absolutely every particle of authority, if we saw fit and thought it was to the best interest of the people we represent, and we would not have the sales agency of the companies under any other circumstances.

Q. You have not seen fit to do that?—A. We have not found it was necessary; the conditions have been such that it has not been necessary. The conditions ever since the big strike have been such that all the product we have handled of the Hillside and the Pennsylvania companies—they have been sold each spring—each spring we have practically cleaned up every pound of coal that we could get on the ground, accumulated, to take care of our customers during the winter months when it is impossible, on account of weather conditions, delays in transportation, to get coal out of the mines and forward it. I have been connected with our office over thirty years. We have some customers on our books who have grown from 1,000 to 3,000 tons a year, who to-day handle 200 to 300; and we have to make an arrangement to protect their interests—the manufacturing trade, the steam trade—during the winter, and we have to accumulate a certain amount of tonnage on the ground. We could invariably, especially on our steam sizes of coal, be oversold in April for more than the company could produce. Last year we thought we would have to use undue care on account of last year's financial difficulties and the shutting down of various factories, but we have less of the small sizes stocked than last year, and the people went right on and mined more coal than last year, which is the largest producing year in the history of the anthracite companies.

Q. The different railroad companies which bring anthracite coal to New York Harbor land it at different points on the harbor?—A. Yes.

Q. Name those points.—A. South Amboy, Perth Amboy, Port Reading, Hoboken, Weehawken, Edgewater, Shadyside, and Port Johnston.

Q. Is the price of all these leading companies who sell coal at New York Harbor the same at these terminal points?—A. The prices at Port Reading, Perth Amboy, South Amboy, and Port Johnston are 5 cents a ton lower than the prices at the upper ports. That is on account of the water freight for delivery around New York Harbor and points beyond.

Q. The water freight from these points is 5 cents higher than the other points?—A. Substantially.

Q. In that way prices alongside New York Harbor for all these companies is equalized?—A. Practically.

Q. You have been in the anthracite coal business here a long time, you have told us. Prior to 1902 were the coals of The Delaware and Hudson Company sold in New York?—A. They merchandised direct. I think the company sold their own coals here.

Q. How did they get them in here, over what lines of road?—A. That is a matter I have never gone into, the route-making of other lines of road. We have simply bought and sold from the initial companies.

Q. Do you report each month some figures to Mr. Ruley, of Philadelphia?—A. No; we make no reports direct to Ruley. Any figures we send we send direct to the Pennsylvania Coal Company.

Q. If Mr. Ruley gets figures from those companies he gets them direct from their offices?—A. Yes.

Q. Do you make up the figures from which the monthly prices f. o. b. New York Harbor are calculated?—A. No. We make up our own sales sheets and send them to the Hillside Coal Company to check up, and the Pennsylvania.

Q. They show the actual money which you receive?—A. Absolutely; it is a transcript of our books.

Q. If there were any reclamations because the coal was not up to grade or too much dirt, or for any other reason you have not gotten the schedule prices, that is shown in your reports?—A. Absolutely.

Q. And that might account for some slight variation from the $5, the ruling price, or the average price?—A. Yes.

Cross-examination by Mr. MOOT:

Q. Whether these figures are correct or not, will the variations in the amount received for particular coal by the Hillside, for instance, as compared with other companies selling here in New York, be all accounted for by mere reclamations?—A. I do not know that it would at all times.

Q. For instance, I show you here one of the Hearst exhibits—Hillside Coal and Iron Company—showing the amount it received in the month of April, 1903, in excess of what it would have received if it had received the lowest price received by any of its competitors. It gives the difference it received on broken coal as 2 cents a ton higher than what its lowest competitor received on broken coal for that month, or $490; its excess on egg coal as 4 cents a ton higher, or $2,163.12 more than its lowest competitor received on that kind of coal here; its excess on price of stove coal 4 cents higher than the lowest competitor, or $3,476.72 in excess of the amount it would have received at the price of its lowest competitor; its excess on chestnut coal, 3 cents a ton more or $1,345.95 more on chestnut coal than it would have received at the price of its lowest competitor; its excess in price on pea coal 20 cents over the lowest competitor, or $6,443 more than the Hillside would receive over the price of the lowest competitor; the excess in price on buckwheat No. 1, 33 cents, or $6,233.11 more than the price of the lowest competitor; the excess in buckwheat No. 2, 45 cents, or $3,281.40 more than the amount that would

have been received at the price of the lowest competitor; the excess in price on buckwheat No. 3, 1 cent, or $66.01 more than would have been received at the price of the lowest competitor; making a total for the month of $23,492.31 more received by the Hillside than would have been received had the Hillside received the lowest prices on each size that was received by its competitor on these respective sizes. Having your attention called to these figures which purport to be based on the actual transactions for that month of April, 1903, through your own office, tell me whether, according to the best of your recollection, anything of that kind transpired.—A. I could not remember specifically, but no such difference as that could exist from allowances on coal. They have to meet any market conditions they see fit.

Q. While I do not suppose you can remember this particular transaction or these transactions of that sort, nor do I suppose you have ever figured out to see how these things came about, yet can you tell us from your own experiences as to whether differences in price as between yourselves and your competitors on these various sizes do occur from time to time and as to whether differences in the amount received as compared with your competitors are mainly caused by reclamations and not difference in price?—A. Difference in prices absolutely. There is no question about that, and they do exist to a greater extent in steam sizes than prepared sizes; but they do exist, they have existed, and I guess they always will exist.

Q. And why?—A. It is merchandising. In connection with the products we handle I have endeavored to have them expend sufficient money to prepare them to the best possible standard, and I think we have to-day the best possible methods of inspection. They keep an inspector at Edgewater, Buffalo, and at each colliery, and if a car of coal slips by that is not prepared properly it is liable to be ordered back, but that is not done as a rule. We say that we do not want it, that we would not take it, and apply to the railroad company, and very often they burn it in their ferry boats. We have a standard established. We have a class of trade, some of which we have had for over thirty years. My partner, Mr. Williams, and our two sons are the only partners, and we have taken a great deal of pride in our business; we have made our customers our friends, and I think we get the best prices in this market. We do not have to go out and make special prices, as a good many of our competitors do. We have facilities to take care of them in trying times. We did not have a customer to get [illegible] of coal in the big strike for five months, and we held our trade. I think there is a great deal that comes in under the question of personality.

Q. That is what you call merchandising?—A. Absolutely.

Q. Would you say the difference in the amounts received, as compared with your lowest competitors, are mainly explained by the reasons you have just given?—A. Yes.

Q. Could you give us an estimate approximately of what differences the reclamations make?—A. It is only hearsay. We try to find

these things out, but that is impossible. We try our best to correct it and it costs a lot of money.

Q. Do your reclamations appear at all in your figures?—A. They do not pay us the money. They take it out of our pocket. They have to be approved by the officer of the company, and the vouchers go in and they are put through the whole account.

Q. The reclamations are?—A. Absolutely.

Q. So that your figures are based on the actual sales, the actual tonnage?—A. And every pound paid for every month. We give our own credits.

Q. You sell all of this coal of the Pennsylvania and Hillside wherever it may be; it is sold directly or through your agents?—A. Directly. We have no agents. We merchandise direct, as a rule.

Q. Take Mr. Roberts at Buffalo.—A. He is on a salary.

Q. You sell at Buffalo through your employee who is on a salary?—A. He has nothing to do with the credits except trying to pass on them.

Q. So that you sell directly how many million tons for these two companies?—A. About 7,000,000 tons.

Q. You handle bituminous coal also?—A. Yes.

Q. About how many million tons of bituminous coal do you handle?—A. I would not want to mention that. It runs into a very large amount.

Q. Would it be millions of tons?—A. We represent corporations and merchandise through them.

Q. Do you handle any anthracite coal except for the Hillside and Pennsylvania?—A. We buy and sell at all times.

Q. From other companies?—A. Yes, and from individual operators.

Q. You spoke of these steam sizes. Does the bituminous coal affect the sale of steam sizes of anthracite at all?—A. When they reach certain prices it does affect them.

Q. For instance, say in New York you have an ordinance against smoke.—A. Yes.

Q. Bituminous coal produces more smoke than anthracite coal?—A. Yes; it certainly does.

Q. So that anthracite steam sizes ought to be preferable to bituminous steam sizes?—A. Yes.

Q. Yet I observe that the Government, in this post-office building and the custom-house, burns bituminous coal. Do you know anything why that is so?—A. I imagine it is purely a question of their grate bars, that they have a grate bar that would give them better and more efficient steam capacity than the more modern buildings we have where they are trying to comply with the laws of the city. I think the custom-house is using bituminous coal.

Q. How much bituminous coal is used here in New York City?—A. It is enormous. You could not operate New York City on anthracite steam sizes. There is not enough to go around.

Q. Does bituminous coal in any form come in competition with the prepared sizes of anthracite?—A. Yes, it does. In Illinois, Indiana, and the Northern States they prepare soft coal there as we do anthracite; they make what is called nut and egg sizes, and stoves are being built to use it; and also in the city of Chicago. There the consumption of bituminous coal for domestic purposes is very large, there and in the west at the present time.

Q. You say they have stoves built to consume bituminous?—A. Precisely; and they prepare the coal to correspond with the sizes as near as possible made in the anthracite district with the more modern machinery they have.

Q. So that the anthracite coal that you sell in Chicago and the West that goes up the lakes has to come in competition with bituminous coal prepared to compete with it for domestic purposes and burning in stoves?—A. Yes.

Q. Made to use for domestic purposes?—A. Absolutely.

Q. How long has that kind of competition existed?—A. It has been growing for the last ten years. The Chesapeake and Ohio advertise coals that they use in the public schools, the Pocahontas and all those coals.

Q. Bituminous coals?—A. Precisely.

Q. Ton for ton, do you know whether these bituminous coals will give more heat than anthracite coal?—A. They certainly will, as the authorities will state. We try to combat that as much as possible, but I think anywhere from 10 to 15 per cent.

Q. This differential down here in the harbor, does it make any difference whether it is coal or wheat or any other commodity in that respect as to a differential? In other words, if wheat or any other commodity reaches the seaport, Edgewater, Weehawken, Perth Amboy, or some other harbor port, will it be able to reach New York City proper unless it is laid down at a price which, added to the cost of getting it to New York City proper, will enable it to compete with the freight coming by the more direct route?—A. The difference is 5 cents between the upper and lower ports. That is taken up by the cost of towing and the cost of the boat.

Q. Have you looked to see whether the rate of the railroad and the 5 cents put together put them practically on a par, although they compete with each other to get the same market?—A. That has been the assumption which has existed about fifteen or twenty years and has become force of habit. Nobody disagrees with it who looks at it. The bulk of the tonnage is handled to-day in large quantities; formerly the boats had 150 to 200 tons, and now they have 1,000. Some men in the harbor have boats which will carry 1,000 tons, and twelve years ago there was no boat which carried over 175.

Q. Those are among the changes that have taken place?—A. Absolutely.

Q. At these line points can you tell me how the prices of anthracite will compare—that is, on the railroad lines—compare with the prices New York Harbor, as to whether higher or lower?—A. I know of

no instance on the line of the Erie road that we ship over where the prices on the line are higher than they are at tide water.

Q. The difference between the line-point prices and the harbor prices in New York is simply a freight difference, usually?—A. Jersey City and the points back through there, Newark and some other points—they are all the same prices.

Q. How when you go back into the interior?—A. They are all readjusted back there. There are none of them in excess of the tide-water prices.

Q. Have you anything to do with paying these rates?—A. Absolutely nothing. We have nothing to do with the tariffs other than maintaining them. We sell coal at the delivery prices.

Q. How you have done that you have explained?—A. Merchandising.

Redirect examination by Mr. McREYNOLDS:

Q. Some years ago did a good deal of the coal come to New York which was brought from Newburgh and points up the Hudson River?—A. There was a comparatively small amount as regards the total tonnage. The bulk of the coal brought to Newburgh went to points on the river, north or south points, Albany and Troy and other points.

Q. A good deal of the Delaware and Hudson coal used to come that way?—A. I do not know. I am not familiar with that part of it at all. The Pennsylvania Coal Company came that way at one time, and still comes that way, but only during the season of navigation.

Q. When is the season of navigation?—A. From about the middle of March to the 1st of December.

RICHARD D. RICKARD, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination:

Judge CAMPBELL. I desire to renew the general objection, and add to it that the New York, Ontario and Western Railroad Company is not a party to this suit, and no matter pertaining to it is pertinent or competent evidence to the issues joined here.

Mr. MOOT. I join Judge Campbell in that objection.

By Mr. McREYNOLDS:

Q. What is your connection with the New York, Ontario and Western Railway Company?—A. Secretary and treasurer.

Q. And what is your connection with the Elk Hill Coal and Iron Company, the Scranton Coal Company, and the Black Diamond Coal Company?

Judge CAMPBELL. I object to any testimony with relation to the affairs of these companies for the reasons before stated.

A. I have no connection with the Black Diamond Coal Company, but I am secretary and treasurer of the other companies mentioned.

Q. You know the facts, do you not, about the officers and directors and stockholders of the Black Diamond Company?—A. Yes, sir.

Q. At our request you have prepared sundry statements; in obedience to a subpœna you have prepared certain data with reference to the New York, Ontario and Western Railway Company and coal companies before mentioned, which I have here in my hand. Have these statements been made up from the books and records of the several companies?—A. Yes, sir.

Q. They indicate correctly what the books and records of those companies show, do they not?—A. Yes.

The statements are introduced in evidence as government exhibits.

Government Exhibit No. 112 is a statement showing the capital stock, officers, directors, and other information concerning the New York, Ontario and Western Railway Company.

Government Exhibit No. 113 is a statement showing the total freight tonnage and anthracite tonnage and other information concerning the New York, Ontario and Western Railway Company.

Government Exhibit No. 114 is a statement showing the collieries and washeries on the line of the New York, Ontario and Western Railway Company, and so forth.

Government Exhibit No. 115 is a statement of the stockholders, capital stock, and so forth, of the Elk Hill Coal and Iron Company.

Government Exhibit No. 116 is a statement showing a list of the stockholders of the Scranton Coal Company and other information.

Government Exhibit No. 117 is a statement of the capital stock, officers, directors, and so forth, of the Black Diamond Coal Company. pany.

Government Exhibit No. 118 is a statement showing the lands owned and leased by sundry coal companies, the stock of which is owned by the New York, Ontario and Western Railway Company, and so forth.

Government Exhibit No. 119 is a statement of the coal purchased by the Scranton Coal Company from various collieries from January 1, 1907, to April 1, 1908.

Q. Does the New York, Ontario and Western Railway Company own stock in any other company producing anthracite coal except the ones that have been given to us in these statements?—A. No, sir.

Q. You have given us a statement showing coal purchased by the Scranton Coal Company from various collieries. Are all those collieries located in the Wyoming anthracite region?—A. Yes, sir.

Q. And are Ruley's average f. o. b. prices New York used in making settlements for coal purchased by the Scranton Coal Company with the various collieries?—A. I believe so.

Q. Can you give us an estimate of about what proportion of this coal purchased by the Scranton Coal Company came to New York Harbor?—A. I do not know.

Q. Can you give us a rough estimate?—A. It all forms part of the total tonnage reported as sold monthly.

Q. Some of this coal comes to New York Harbor?—A. I presume so, but I am unable to say.

Cross-examination by Mr. KERR:

Q. One of the statements gives the amount of the capital stock of the New York, Ontario and Western Railway, and it contains a statement that on the 29th of September, 1908, 290,000 shares were registered in the name of the New York, New Haven and Hartford Railway Company. How many stockholders were there of record of the New York, Ontario and Western Railway Company at that date?—A. My recollection is there were 3,060.

JOHN B. KERR, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. State your connection with the New York, Ontario and Western Railway Company.—A. Vice-president and acting general counsel.

Q. How long have you been connected with the road as vice-president?—A. I think about fifteen years.

Q. Have you been connected with the road in any other capacity?—A. Yes; I was attorney and I was a director most of the time for twenty-five years.

Q. Have you recollection of the facts concerning a projected independent railway in the year 1898 from the Wyoming region, in the anthracite coal district, to tide water, and the acquisition of the Simpson & Watkins collieries by The Temple Iron Company in 1889?

Mr. WARREN. Counsel for The Temple Iron Company objects to this question as in form incompetent, and the evidence as incompetent.

A. I recollect that there was a company organized, and in fact it was announced that the company was organized to build a road.

Q. Where was that road to extend from?

Mr. WARREN. That is objected to, unless counsel for the Government shall, by inquiry other than the present question, show some knowledge on the part of the witness other than that it was a rumor, the same being incompetent.

A. I have no knowledge of it except the announcement in various ways that a company had been organized to build from some point in the Wyoming region to some point on the division line between Pennsylvania and New Jersey.

Judge CAMPBELL. I give notice of a motion to strike out that testimony.

Q. You say you knew in 1898 that it was announced that such a road was projected. Who were the parties understood to be behind that road?

Mr. WARREN. That is objected to as calling for hearsay, and as not competent evidence, the witness having stated that he had no knowledge of his own of the facts which the government's counsel are now undertaking to get from him by incompetent methods.

A. The parties whose names I heard mentioned in connection with it were Simpson & Watkins, E. L. Fuller, E. B. Sturgis, I think one of the Jermyns, I think M. S. Kemmerer, and I do not recall any other names.

Q. Were Simpson & Watkins at that time large producers of anthracite coal in the Wyoming region?—A. They owned three or four collieries; they managed three or four companies that produced anthracite coal.

Q. Were they not among the largest, if not the largest, independent producers of anthracite coal in that region?—A. Yes; I think they were.

Q. Were the other parties which you have mentioned also producers of anthracite coal?—A. To some extent.

Q. What became of the collieries which were controlled and operated by Simpson & Watkins in the year 1898?

Mr. WARREN. That is objected to until the witness has shown he has some knowledge of what became of them, and I submit it is improper and incompetent to gather hearsay testimony from a gentleman who had no association in business or otherwise with Simpson & Watkins or the proposed road which he has referred to, and I give notice that I shall move to strike this out because I respectfully submit to the court it is outside of the legitimate inquiry.

A. I only know of my own knowledge of one. That was the Northwest Colliery, the stock of which was purchased by The Temple Iron Company.

Q. Had you information at that time that The Temple Iron Company also acquired the other collieries operated by Simpson & Watkins?—A. I had no direct information.

Q. Is that your understanding?

Mr. WARREN. That is objected to.

A. I heard so.

Q. Is the New York, Ontario and Western Railway Company interested in the traffic of any collieries operated by Simpson & Watkins?—A. The Northwest.

Q. How was it interested?—A. We built a branch to the colliery, and a portion of the product was shipped over that branch to our main line, and also over the main line.

Q. After the colliery was acquired by The Temple Iron Company was any effort made to divert the traffic from the New York, Ontario and Western Railway Company?—A. There was at first, but subsequently the shipments were resumed, and have been continued ever since.

Q. To what road was it diverted first?—A. There were only two roads in it, one the Erie and the other was the Ontario and Western.

Q. The Ontario and Western road had some sort of an agreement with the colliery for the transportation of its coal?—A. Yes.

Q. And in violation of that agreement the coal was diverted to the Erie road?—A. That is our claim.

Q. Did the New York, Ontario and Western file a suit against the operator of the colliery to prevent that diversion?—A. I believe we did; yes.

Q. I have a certified copy of the bill of complaint in that suit in which it appears that John B. Kerr, vice-president of the New York, Ontario and Western Railway Company, swore to the bill. Were you the Mr. Kerr?—A. I presume so. There is no other Kerr.

Q. And when you did swear to that bill were you acquainted with the facts set out in it?—A. I presume I was. I do not know. That is, such as were set out of my own knowledge.

Q. I read you from the certified copy of the bill in that case, as follows: "That during the year 1898 the said Simpson & Watkins, together with other persons engaged in mining anthracite coal, organized a corporation under the laws of Pennsylvania with the avowed purpose of constructing a railroad over which they would transport coal, the product of their mines, thereby, so far as they might be able to do so, taking the tonnage from other railroads then existing; that the subject was agitated in newspapers and otherwise, and was carried along to the extent that surveys of the projected road were made, contracts for rails entered into, and some rights of way purchased, as your orator is informed and believes. That during the winter of 1899 the plaintiff was requested to join certain other railroad corporations engaged in the transportation of anthracite coal, namely, the Philadelphia and Reading Railway Company, the Lehigh Valley Railroad Company, The Central Railroad of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company, and The New York, Susquehanna and Western Railroad Company (whose railroads, with that of the plaintiff, embrace all the railroads leading from the anthracite coal fields to tide water, with the exception of that of the Pennsylvania Railroad Company), in a plan to buy up certain collieries owned by so-called 'individual operators,' and in that way not only control a larger percentage of the coal mined, but defeat the construction of any new line; but the plaintiff declined to enter into any such combination. The other companies named proceeded, and having secured control of an existing corporation, called the 'Temple Iron Company,' through that company bought up all the capital stock of all the mining corporations in the anthracite region in which the said Simpson & Watkins were interested, including all the capital stock of the Northwest Coal Company, the defendant. As plaintiff is informed and believes, the organization of the various companies was preserved, and in the Northwest Coal Company, Thomas H. Watkins, who had been before such purchase of said stock treasurer and manager of the defendant, was made president of the said Temple

Iron Company and of defendant company and manager of the operations of both companies." Does the quotation which I have read to you from this bill state the facts as you understood them then and now as to the matter about which I have inquired?

Mr. WARREN. I object to this method of introducing evidence as incompetent and improper. There is no authentication of the document, and if it is to be established in that way it must be offered as a substantive piece of evidence; and it is not proper for counsel for the Government to read a document with which the witness is associated in the record as part of his evidence, and I move to strike it out.

A. If you read correctly from the record—it is as alleged in the complaint.

Q. I ask whether that is your understanding of it or not.

Mr. WARREN. The understanding of the witness is immaterial. The question here is what were the facts, not what he or anybody else may have understood or alleged them to be, on information and belief, in adverse litigation against someone, and the further fact that it is a recital of a part of the pleadings in a controversy there instituted or about to be instituted, and it is certainly not competent evidence in this case.

Q. Here is the document. Read it yourself, and say whether that quotation is correct.—A. I have just read it. Those were the complaints or inferences which we drew from the facts alleged which came to our knowledge.

Q. Did the New York, Ontario and Western Railroad Company become a stockholder of The Temple Iron Company?—A. They did subsequently.

Q. Is the railroad company now a stockholder of The Temple Iron Company?—A. No.

Q. What did it do with the stock?—A. Sold it. Not exactly sold it—some years after the stock was issued and put on the market the railway company had surplus funds in their insurance funds, and we invested it in $50,000 worth of The Temple Iron Company stock and held it for two or three years, until the stock was called in under the terms of the agreement under which it was issued, and we received par for the stock and surrendered it.

Q. Was the railroad which you understood was to be projected in 1898 to carry the coal from Simpson & Watkins's collieries ever, in fact, built?—A. No.

Q. What became of this suit, a certified copy of which I have shown you?

Mr. WARREN. That is objected to, because the certified copy is not offered in evidence, and it is incompetent to call his attention to matters in that way—to identify a paper which is not produced and offered.

A. An order was made in that action restraining them from diverting from the railroad of the plaintiff coal they mined and which

they had agreed to ship over the road, and no further proceedings were taken.

Q. The case never came to a final hearing?—A. No.

Q. Did you have any conference with the parties representing any of the other railroads reaching into the anthracite coal regions with reference to the settlement of this suit?—A. No.

Q. Were there any negotiations between your railroad company, as far as you know, and any other railroad company; any negotiations between any officer of the New York, Ontario and Western and anthracite-carrying railroads, with reference to the settlement of this suit?—A. No, sir. If you have read this document, the connection was made between our track and the breaker track so that we could get cars in there, and one of the provisions of the mandatory order was to restore that connection, and after that was done we put in cars there and shipped the coal.

Q. Is any party now connected with the New York, Ontario and Western Railway Company on the board of directors of The Temple Iron Company?—A. I believe Mr. Fowler, the president of the company.

Q. How long has he been a director of The Temple Iron Company?—A. I think about four years.

Q. The New York, Ontario and Western owns no stock in The Temple Iron Company now?—A. No.

Q. And not for how long?—A. Since the 1st of January, 1907 or 1908, I have forgotten which time, when the stock was called in.

Q. Do any of these coal companies, the stock of which is owned by the New York, Ontario and Western Company, purchase coal from other collieries under what are called the 65 per cent contracts?—A. They purchase coal from other collieries at prices which result from the 65 per cent contracts, but we have no contracts with those companies.

Q. But you purchase it on that basis?—A. Yes.

Q. How do you get your figures upon which your settlements are based?—A. We have the figures from Ruley.

Q. How long have these coal companies been purchasing from other collieries?—A. Three years, I think.

Q. Prior to that time, did the railroad company itself make purchases direct?—A. It did.

Q. Upon what basis?—A. Substantially the same basis, whatever the prevailing rate was.

Q. Do you remember when the prevailing basis for purchase became 65 per cent, the year?—A. I think 1900.

Q. Prior to that time, what was the basis upon which the purchase was made?—A. Sixty per cent.

Q. And earlier still, was it not a less per cent?—A. It was 60 ever since we built in there. At the time we went in there the prevailing purchase price was 55.

Q. When you went in there and into the market it commenced at 60?—A. It commenced at 60.

Q. When did the New York, Ontario and Western build into the anthracite regions?—A. It opened a road in 1890, a branch, which reached the anthracite field.

Q. And was 1890 the year when 60 per cent began to be the basis upon which coal was purchased in that region of the producers?—A. In 1889 or 1890.

Q. To what points from the anthracite coal regions do the lines of the New York, Ontario and Western lead?—A. The southerly terminus of the branch into the field is Scranton.

Q. And from that point where does it go?—A. It reaches the main line at Cadosia, in Delaware County, N. Y. The line extends from Weehawken in New York Harbor to Oswego Lake, and several branches.

Q. You transport coal on bills of lading from the collieries down to New York?—A. Yes.

Q. Why is the president of the New York, Ontario and Western Railway Company a member of the board of directors of The Temple Iron Company when the railroad company has no stock in it?

(Objected to.)

A. I do not know.

Q. Does your president meet with the board of directors regularly, do you know?—A. No; he has attended only a meeting or two this year. I do not know whether he attends regularly or not.

Q. Were you acquainted at all with the business of The Temple Iron Company before it took over the collieries of Simpson & Watkins?—A. No.

Q. Do you know what its business was?—A. No; I do not positively. My understanding was that it was a corporation.

Mr. WARREN. I object to the understanding.

A. My understanding was that it was a corporation in active business, a mining and manufacturing corporation that had been in existence for several years prior to the time I knew of it.

Q. Had it an iron furnace in the coal regions, which was operated?—A. I believe it owned some coal property.

Cross-examination by Judge CAMPBELL:

Q. You incidentally mentioned about this Northwest colliery which was in litigation; that part of the tonnage was previously transported over the Ontario and Western Railroad Company, and I understood the other part was transported over the Erie Railroad?—A. Yes.

Q. Was there or not some basis of division of the tonnage as between the two roads, founded on the property rights or ownership of the lands out of which the coal was to be mined?—A. No, sir; the Ontario and Western had no property interest in the mine.

Q. You had a contract under which you had, at some considerable expense, constructed a track to this colliery?—A. Yes.

Q. Which gave you a property right which you conceived to be your right to have a portion of the tonnage transported over your line?—A. Before the road was constructed the Northwest Company

had made an agreement with the Ontario and Western Company that if they would cause a railroad to be constructed to connect with its main line and would build a branch to the Northwest colliery they would ship over the lines of the Ontario and Western one-half of the coal produced. The railroad company constructed a branch from its main line to the Northwest colliery. That branch alone cost $60,000 or $70,000, a large sum of money, and for ten years at least one-half of the output was shipped over the road, and our action was based on that contract, because the railroad company had gone to the expense of the construction of a branch track on the faith of the agreement that the party in interest would ship over that branch track, and the producer would be prevented from diverting the business to another line. The railroad company had fulfilled its part of the contract.

Q. Do you know where the property ownership of the land over which the Northwest colliery is located belongs?—A. It belongs to Francis B. Wallace and Mary C. Wallace—at that time Francis B. Wallace. I think they did get a small portion of their land from the Hillside Coal and Iron Company, but the main body from the Wallaces.

Q. Simpson & Watkins were the owners of the stock of the Northwest colliery?—A. Yes.

Q. Did they have any associates, or were they the sole owners?—A. They had some associates.

Q. They were then the lessees of the coal in these lands, of the owners?—A. Yes.

Q. And operated the collieries under a royalty?—A. Yes.

Q. You say some portion of the land on which the colliery is located belongs to the Hillside Coal and Iron Company?—A. I think it does.

Q. Do you know whether, in making the lease of their interest to the Northwest Company, any reservation of tonnage was made?—A. No, sir; I do not know.

By Mr. WARREN:

Q. This colliery was situated on the Jefferson branch of the Erie, was it not?—A. The Northern Jefferson division.

Q. When I say located I do not mean located directly on what you might call the main line of the Jefferson division; but they, too, had built a spur or branch into the colliery from the Jefferson division of their road?—A. Yes; a shorter branch they were compelled to build.

Q. They built a branch track?—A. Yes.

Q. They had a contract for a portion of this tonnage?—A. Yes.

Q. And it called for a certain number of tons per year?—A. I do not remember whether it was for a number of tons, the actual, specific number of tons, or not. We did have a contract for a certain portion of the output. I assume their's was one-half.

Q. You do not know just what the terms were of that contract, whether the Northwest Coal Company at the time its stock was con-

trolled by Simpson & Watkins and their associates had entered into a contract with the Hillside by which all of its tonnage was to be shipped over the Erie?—A. I understood there was no such contract.

Q. You do not know whether there was or not? You understood there was a contract?—A. There was a contract for a portion.

Q. Have you ever seen it?—A. No.

Q. You do not know its details?—A. No.

Q. You said you heard by rumor or hearsay that certain gentlemen, whom you named as independent operators, who were interested, as you were told, in the proposed or projected construction of a railroad to run from the collieries of Simpson & Watkins to a place somewhere in the State of Pennsylvania near the Jersey line?—A. I did not say from the collieries of Simpson & Watkins; I said from the coal regions.

Q. You gave us the names of some gentlemen you thought you remembered hearing were interested in that projected road?—A. Yes.

Q. You did not name William Connell?—A. No.

Q. Do you remember hearing he was interested in it, and don't you remember hearing of his name?—A. I do not remember hearing his name.

Q. Do you remember hearing of William G. Payne, of Kingston?—A. Yes.

Q. Do you remember of hearing of Colonel Watres, of Scranton?—A. Yes; I believe I do.

Q. You knew Doctor Rice very well?—A. Yes.

Q. His name was James M. Rice?—A. Yes.

Q. Do you remember hearing he was one of the gentlemen interested in it?—A. Yes; I think he was.

Q. You know Tom Jones?—A. Yes.

Q. And James J. Williams, now dead?—A. Yes.

Q. Do you remember hearing they were interested in this projected proposition?—A. Yes.

Q. You have only given us the names of a few, and you do not know the names of many others who were, according to your hearsay rumor reports, interested in this thing?—A. Yes; I remember now they were interested in it.

Q. Do you remember whether the name was to be the New York, Wyoming and Western Railroad Company?—A. I believe that was the name.

Q. Do you remember that it was to start at a point near Pittston?—A. Yes.

Q. In Luzerne County, and to terminate at a point in Northampton County, on the Delaware River, nearly opposite the town of Belvidere, in New Jersey?—A. I remember the southern terminus was on the state line, but I do not remember the northern terminus.

Q. Counsel for the Government asked you whether this proposed road from the collieries of Simpson & Watkins, or wherever it was to go, in this connection was never built, and you said so. Did you ever know of the proposition—of its ever starting at the collieries of

Simpson & Watkins?—A. Never. I did not understand I was asked that question, and certainly I did not intend to say any such road was projected.

Q. The town of Pittston is practically 9 miles below Scranton, southwest?—A. Yes.

Q. At the upper end of what is called the Wyoming Valley?—A. Yes.

Q. The Northwest colliery is 16 or 18 miles north of Scranton and at the upper edge of the Lackawanna Valley?—A. Yes.

Q. Therefore, 20 or 25 miles north of Pittston?—A. Yes.

Q. The Edgerton colliery was between Carbondale and Scranton, a mile or two south of Carbondale?—A. It was.

Q. That means that it is at least 14 miles north of Scranton?—A. Yes.

Q. And between 20 and 25 miles from the terminus of this proposed projected road at Pittston?—A. Yes.

Q. The Sterrick Creek Coal Company is located near Pecksville, in our county?—A. Yes.

Q. That is a matter of 8 miles north of Scranton?—A. Yes.

Q. Therefore, 18 miles north of Pittston?—A. Yes.

Q. So that when you come to speak to Simpson & Watkins's interest in the proposed projected Wyoming road, which was to land at a point opposite Belvidere, you do not mean to say its construction would facilitate the movement of coal from the collieries in which those gentlemen were interested at that time?—A. Not the upper region; no.

Q. There is another colliery in which they were interested, known as the Lackawanna Coal Company (Limited). You remember knowing of that?—A. Yes.

Q. That is in Blakely, on the other side of the Lackawanna River, 8 miles north of Scranton?—A. Yes.

Q. So that four of the collieries, as they then were, in which Simpson & Watkins were interested, with other gentlemen, were north of Scranton, and the nearest about 8 miles and the farthest 18 miles north of Scranton?—A. About that.

Q. Now, this road, assuming it had been built from Pittston, which was its designated northwestern terminus, to the point on the Delaware in Northampton County, opposite Belvidere, N. J., as the southeastern terminus, so far as you know by rumor of this proposed line, it did not connect with Simpson & Watkins's collieries north of Scranton at all?—A. No.

Q. And of course it ended in the State of Pennsylvania, across the Delaware River from Belvidere, N. J.?—A. Yes.

Q. And that is the distance of the width of the State of New Jersey from tide?—A. Certainly.

Q. And you know of no railroad which was projected by charter or right of way, or even on paper, that would get the coal from the Simpson & Watkins collieries to tide, do you, even by rumor?—A. No.

Q. You spoke of a branch into the Northwest colliery. That was built in what year, do you remember? I think you said your road built it at a cost of $60,000 or $70,000.—A. It was built in 1889 or 1890.

Q. So that Simpson & Watkins, or rather the Northwest Coal Company, in which they were interested, had been furnishing coal to the New York, Ontario and Western Railway Company over this branch which you built especially for that purpose, prior to the date you understood The Temple Iron Company acquired the stock of Simpson & Watkins in The Northwest Coal Company's property?—A. Yes.

Q. And also of several years' duration?—A. Yes.

Q. And this controversy you got into—I do not know the parties to it, but whatever it was which Government's counsel called your attention to—was a controversy to maintain the right to a portion of the coal coming from the Northwest colliery?—A. Yes.

Q. And that litigation was compromised, was it not?—A. No. They commenced to ship again. That is all that was done about it. I ought to say in justice to them that they had been told that no such contract existed at the time they bought the Northwest Company's stock, and the fact was established in this proceeding that we took that the agreement had been made and was an existing agreement.

Q. This contract you had made, as a fact, and had been working under all these years prior to the purchase by the Temple Company of the stock of the Northwest Company, was not a matter of record in our county court-house?—A. No.

Q. And the defense to your claim was that there was no such contract, or that was their information?—A. Yes; but that the contract had been made by the Northwest Company (Limited), which afterwards became the Northwest Company, and the property was transferred from the limited company to the other company, and that contract being made with the original company, Simpson & Watkins, I understood, had said that that vitiated the contract, although they had shipped under it some seven or eight years, and that was their excuse for saying no contract was in existence.

Q. Since the resumption of deliveries you have continued to receive from the Northwest colliery the same tonnage which you had theretofore received from the colliery?—A. The same proportion.

Q. And there has been no attempt of a diversion by The Temple Iron Company of any of your tonnage?—A. No. At times when the Erie could not take the coal through they shipped by our line.

Q. In other words, you at times got an excess?—A. Yes.

Q. It is not an unusual thing in a matter of congestion for one line to allow another road to take some amount in excess of the contract for that road?—A. It is not.

Redirect examination by Mr. McREYNOLDS:

Q. What would have been the effect of this projected railroad, as far as the tonnage in the Wyoming district is concerned, if it had been constructed?

Mr. WARREN. That is objected to as incompetent and improper, because it asks for a conclusion from the witness without showing that the witness has a sufficient knowledge of the facts to testify or express an opinion, and it really calls for nothing more than an opinion or a guess of the witness, and it is incompetent.

A. In my opinion, if they could have raised the money to build that road, and in my judgment they never could have raised it, but if they could have raised the money to construct the road they never would have secured business enough to pay operating expenses. Most of the coal controlled by these people was leased; a large percentage of it was leased through coal companies which were owned by the railroad companies, and the coal was under contract to be shipped over the lines of the railroad companies who owned the coal companies, and in my judgment these contracts would have been enforcible—that is, to the extent of preventing a diversion to this new line. And the cost of construction to very many of the collieries was entirely prohibitive; it would cost so much that they could not afford to go in there for the tonnage they would get. A great many railroad companies owned the tracks up to the breakers and underneath the breakers and could not have been evicted, in my judgment, from the collieries. The New York market, which would have been the coal market that their line reached, is the least profitable market for coal, and that fact would have caused a great many of them who attempted to ship over that line to desist, because they wanted to reach line points on various railroads and they would have had no branch-track facilities to their collieries over these other lines. My judgment of the whole scheme was that anybody who gave up one dollar to prevent the construction of that line or carrying out of that project was yielding to what looked to be a bluff, and did a very foolish thing.

Q. You say the traffic from many of the mines that might have utilized the projected road was tied up by contracts?—A. I mean of the people who identified themselves on paper with the enterprise.

Q. Are you advised whether there are many leases in the anthracite regions of coal mines or properties actually owned by companies who themselves are controlled by the railroads with the proviso that all coal mined therein shall go over a certain line?—A. I think there are.

Q. That is customary in that region?—A. I think it is—that is, to the markets that those lines reach.

Recross-examination by Mr. WARREN:

Q. Will you give me an estimate of the distance across the State of New Jersey to any point, or any New York Harbor point from Belvidere?—A. By air line? It would be impossible to build a railroad by air line.

Q. Any possible railroad, not by air line?—A. The shortest one would be the Delaware, Lackawanna and Western.

Q. Give some statement, if you can, with any degree of fairness, as to the distance in miles from Belvidere, N. J., to any point in New York Harbor.—A. I should say it was 90 miles—75 to 90 miles. I desire to add that the branch of the Ontario and Western main line to the Northwest colliery had absolutely no business except what coal it might receive from that colliery, and if the shipments from that colliery had ceased the branch would have had to be abandoned and the investment in it lost.

(Adjourned until October 22, 1908, 10.30 a. m.)

Met pursuant to adjournment at the office of the United States district attorney, Post-Office Building, New York City, on Thursday, October 22, 1908, at 10.30 o'clock a. m.

Present: The Examiner; J. C. McReynolds, esq., and G. Carroll Todd, esq., for the United States; and J. D. Campbell, esq., Adelbert Moot, esq., Everett Warren, esq., J. F. Schaperkotter, esq., J. L. Seager, esq., and J. H. Torrey, esq., for various defendants.

MARTIN P. BLAUVELT, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Mr. Blauvelt, what is your residence and occupation?—A. I reside at 225 West Eightieth street, New York, and my occupation is comptroller of the Erie Railroad Company and of the Hillside Coal and Iron Company, The Pennsylvania Coal Company, and other companies.

Q. Under your direction statements concerning coal bought or handled by the Hillside Coal and Iron Company have been prepared and heretofore made a part of the record. Were those statements made up under your direction?—A. They were.

Q. Please tell us whether these statements showing coal purchased by the Hillside Coal and Iron Company include the coal purchased by that company from The Delaware and Hudson Company?—A. They do.

Q. And do the totals of these statements showing the amount of purchased coal shipped to tide water include the coal purchased from The Delaware and Hudson Company which come to tide water?—A. They do.

Q. Mr. Blauvelt, do you know what part of the coal purchased by the Hillside Coal and Iron Company from The Delaware and Hudson Company came to tide water?—A. I could furnish that information probably.

Q. Has all the coal delivered by the Delaware and Hudson to the Erie Railroad at Honesdale come to tide water at New York?—A. Not quite all of it.

Q. Substantially all of it?—A. Well, substantially.

Q. To what other points has the coal purchased by the Hillside Coal and Iron Company from The Delaware and Hudson Company been shipped?—A. Substantially all to Chicago, by the Erie Railroad.

Q. Is it sold in the market at Chicago?—A. No; it is sold from the Chicago market, but it goes to outlying points, more or less of it—well, some of them are western points.

Q. Is it sold at Chicago prices?—A. Yes, sir.

Q. What are the Chicago prices, as compared with New York f. o. b. prices?—A. Considerably higher.

Q. How much? Is there not a fixed relation between them?—A. I think there have been introduced the Chicago circular selling prices.

Q. Have the Chicago circular prices been the same from 1902 down to date?—A. I couldn't tell you.

Q. Do you know what the tariff over the Erie is from Carbondale to Chicago—the published tariff rates on prepared sizes of coal?—A. I can't say to a certainty; I think it is $3.50 a gross ton.

Q. Are the average prices received for the Delaware and Hudson coal sold f. o. b. New York Harbor kept by anyone connected with the Hillsile Coal Company?—A. Yes, sir.

Q. Do you keep them?—A. Yes, sir.

Q. Can you furnish us with that statement?—A. Yes, sir.

Q. Commencing with 1902 and down to date, please.—A. I will produce it.

Q. Does any of the Delaware and Hudson coal delivered to the Erie Railroad at Carbondale come from that point over the Erie tracks to New York?—A. It shouldn't.

Q. Whether it does or not, you don't know?—A. It is not intended; possibly a car might be diverted at some time and come east.

Q. Mr. Blauvelt, you can make up a statement showing the total amount of coal purchased by the Hillside Coal Company from the Delaware and Hudson Company from 1902 to date, can you not?—A. Yes, sir.

Q. We will ask you to do that and produce it later, and we will also ask you to let that statement show the amount of the total which came to tide water?—A. Yes, sir.

Q. Mr. Blauvelt, do the books of the Hillside Coal Company show the result of the purchase and sale of the coal produced by The Delaware and Hudson Company and delivered to the Erie Railroad Company?—A. I do not think they do; the Delaware and Hudson coal is separate from the other.

Q. You do not keep that as separate items on your books?—A. Not all of the expenses incident to it; no, sir.

Q. So you couldn't tell us from those books just what the loss on that contract has been?—A. That is another question. I wouldn't like to answer that.

Q. You mean you do not know?—A. Well, I am not certain; the books do not show it, but whether I might be able to pick it out is another question.

Q. Is the Hillside Coal and Iron Company paying any dividends to its stockholders?—A. No, sir.

Q. How long have you been connected with the Hillside Coal and Iron Company?—A. Well, over ten years.

Q. Has it ever paid a dividend during that time to its stockholders?—A. No, sir.

Q. Have its operations during that time each year shown a loss?—A. No, sir.

Q. They have shown a profit on the books?—A. Yes, sir.

Q. What has become of the profit?—A. The Hillside Coal and Iron Company owe the Erie Railroad Company a very large amount of indebtedness, covering a period for a number of years back, and they have never been able to earn, except in certain years, the interest on that indebtedness. Once in a while they have exceeded the interest, but as a rule they haven't earned it.

Q. So the Hillside Company has not been able to earn sufficient to pay anything over and in addition to its fixed charges?—A. No, sir.

Q. How long have you been connected with the Pennsylvania Coal Company?—A. Seven years.

Q. Has that ever paid a dividend since your connection with it?—A. It has paid—it has earned money in excess of its fixed charges.

Q. What do you mean, that it has earned money in excess of the interest and fixed charges?—A. Well, paid over—well, paid all the way from a million to a million and a half on account of the cost of the property or the investment of the Erie in the property.

Q. The Erie owns the stock of the Pennsylvania Coal Company?—A. Yes, sir.

Q. Does the Pennsylvania Coal Company also owe the Erie a large amount of money?—A. Not such a large amount in addition.

Q. Do you mean by paying to the Erie interest on the investment, interest on this money which it owes the Erie Railroad?—A. No; interest on the Erie's investment in the property.

Q. I do not think that would be very comprehensible to the ordinary reader; was that in the shape of a dividend on the stock, or in the shape of interest on money owed the Erie?—A. I don't think it was exactly either one.

Q. What was it, then?—A. The Erie Railroad Company owned the entire capital stock of the Pennsylvania Coal Company, and at the end of the year the surplus of the Pennsylvania Coal Company, whatever it might be, was turned over to the Erie Railroad Company—I don't think as a straight declaration of dividend.

Q. Is this Delaware and Hudson coal, purchased by the Hillside Company and sold at Chicago, sold at what are known as f. o. b. car rate Chicago?—A. I think that this year the Delaware and Hudson coal going west is sold at the mines.

Q. To whom?—A. To the Crescent Coal Company—the Crescent Coal and Mining Company.

Q. What is the Crescent Coal and Mining Company?—A. It is a coal company operating in Chicago.

Q. Who owns it?—A. The president is Mr. W. S. Bolter.

Q. Who owns the stock?—A. I don't know.

Q. Is it owned by the Erie Railroad?—A. Oh, no.

Q. How was it before the present year?—A. Pardon me, I think that is true—I mean that Bolter is president, and that the Erie don't own any stock—but I think that is the way it was sold this year.

Q. How was it sold prior to this year?—A. By a regular sales agreement, substantially the same as Williams and Peters sold the other Hillside coal.

Q. Were those previous years for coal f. o. b. Chicago?—A. The prices quoted there.

Q. That is, are quoted f. o. b. cars Chicago?—A. I think so; I will say yes, f. o. b. cars Chicago.

Q. Then the prices were f. o. b. cars Chicago?—A. Yes, sir.

Q. You mean for the present year, 1908?—A. Yes, sir.

Q. Do you know the prices for prepared sizes which the Crescent Coal Company pays for the Delaware and Hudson coal at the collieries?—A. No, sir.

Q. Is it based on the Chicago prices?—A. I don't know anything about it.

Q. Who would know?—A. I suppose the Crescent Company would know.

Q. Don't the Hillside Company know what it gets?—A. What the Delaware and Hudson Company gets?

Q. No; what the Hillside Company gets?—A. You were speaking of the Crescent Company.

Q. We understood you to say that the Hillside Coal Company purchases from the Delaware and Hudson Company, and that it sold to the Crescent Company at the mines? Did I understand you right?—A. No; when I said that, I thought this year there was a change made. I think, beginning the 1st of April, that the Crescent Company purchased the coal direct from the Delaware and Hudson Company, and it is transported over the Erie line. Prior to April, the Hillside Company purchased that coal from the Delaware and Hudson Company and sent it a number of the years of that agreement to Chicago under a regular sales agreement, and the coal was sold by the Crescent Company under these regular prices.

Q. So that at present the Hillside Company is not purchasing any Delaware and Hudson coal that moves by way of Carbondale?—A. I don't think it is since April. I am telling this from recollection and I may be wrong, but I think I am correct.

Q. Mr. Todd will hand you a statement of just what we want you to make up.—A. And then I will tell you whether I am correct about that last matter.

(All the counsel present reserve the right to cross-examine Mr. Blauvelt when recalled.)

JULIAN H. ABBOTT, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Mr. Abbott, what is your residence and occupation?—A. Hopatcong, State of New Jersey; occupation, tide-water sales agent for the Delaware, Lackawanna and Western Railroad Company.

Q. How long have you been tide-water sales agent of the Delaware, Lackawanna and Western Railroad?—A. About six years.

Q. As such tide-water agent, what are your duties?—A. To sell coal.

Q. Anthracite coal?—A. Yes, sir.

Q. Do you sell this coal on a commission, or are you an employee of the railroad company?—A. A salaried employee of the railroad company.

Q. Have you anything to do with coals mined or controlled by the Delaware, Lackawanna and Western Railroad Company which are not disposed of at tide water?—A. No, sir.

Q. How much coal annually do you sell from there?—A. From two million to two million and a half tons.

Q. Who gives you the prices at which it shall be sold?—A. Our vice-president, Mr. E. E. Loomis.

Q. Speaking of the prepared sizes alone, have those prices been the same since you have been connected with the company?—A. Not since I have been connected with the company. I have been connected with the company for twenty-eight years.

Q. Well, since you have been their sales agent at tide water?—A. Practically the same each year.

Q. Have those prices been $5 per ton f. o. b. during the months from September to April, then $4.50, commencing with April, and then advancing 10 cents each month thereafter until they get back to $5?—A. They have.

Q. Have those been the same prices that have been published as the selling prices of the other large coal dealers at tide water here in New York?—A. I don't know as to their prices.

Q. What is your information as to their prices?—A. Certain months I received circulars from them; other months I did not get them.

Q. Have you ever known of their published prices being different from your prices?—A. Not their published prices.

Q. Does the Delaware, Lackawanna and Western issue circulars from time to time?—A. Yes, sir; it does.

Q. We will ask you to produce the circulars which have been issued from 1902 down to date.—A. They are not complete—our files are not complete on those; there are sufficient there to show the different periods of each year.

Q. A size of this coal which is on these circulars is called "grate;" is that also sometimes known as "broken?"—A. It is; certain companies call it "broken."

Q. Where do the coals shipped over the Delaware, Lackawanna and Western reach tide water?—A. At Hoboken.

Q. What are the estimated water freights from Hoboken to what is called "alongside," New York City?—A. Fifteen cents per ton within the regular towing limits; beyond these towing limits it is more than that, depending upon the distance.

Q. Mr. Abbott, so far as you know, has any statement been made up by the Delaware, Lackawanna and Western Railroad, showing what it costs that company to sell coal here at tide water?—A. I have no knowledge of it.

Q. You do not know what the cost of these sales are?—A. I do not.

Q. Do you know what the wastage is upon coal from the time it leaves the collieries until delivered f. o. b. New York?—A. I do not.

Q. Do you know whether a large portion of the coal purchased by the Delaware, Lackawanna and Western of other producers is brought to tide water and sold by you?—A. I don't know anything about that.

Q. You sell the coal as Delaware, Lackawanna and Western coal and you don't know where it comes from?—A. I do not know; I sell it as it comes to Hoboken.

Q. You don't know what colliery produces it?—A. I do not.

Q. In what region of the anthracite coal section of Pennsylvania are the coals which you sell as Delaware, Lackawanna and Western coal produced?—A. That I don't know. I know our company gets coals from regions running all the way from Wilkes-Barre to north of Scranton, of which a portion comes to tide water.

Q. That is all in the Wyoming coal region?—A. Yes.

Q. So that all of the coal you sell comes from the Wyoming regions?—A. All free-burning coal, yes.

No cross-examination.

Mr. de Forest, counsel for The Central Railroad of New Jersey and other defendants, makes the following statements, which it is agreed shall be treated as though testified to by a witness called on behalf of the Government:

Mr. DE FOREST. This information is furnished to the Government in response to their inquiries, and I furnish it upon the same understanding and stipulation as respects the other information furnished in like manner. You ask the following question:

"Q. Is not the Reading Company the actual owner of the stock of The Central Railroad of New Jersey standing in the name of the Pennsylvania Company for Insurances on Lives, etc., and does not the Reading Company vote or direct the voting of said stock and receive the dividends declared thereon? Also, when did the Reading Company acquire said stock?"

In response to that question, I produce as my best answer to it the Jersey Central collateral trust deed, executed by the Reading Company to the Pennsylvania Company for Insurance on Lives and Granting Annuities as trustee, dated April 1, 1901. It appears by the recitals of this instrument that the Reading Company agreed to pur-

chase 145,000 shares of the capital stock of The Central Railroad of New Jersey on January 7, 1901, which I believe to be a fact, and the right of the Reading Company to vote or direct the voting of the stock is set forth in the provisions of this instrument.

Mr. McREYNOLDS. Mr. de Forest, if we can get around the necessity of printing that document in the record, it might be desirable.

Mr. DE FOREST. The provisions relating to the Reading Company's right to vote are contained in article 3, at pages 23, 24, and 25 of this instrument.

The deed of trust, "Jersey Central collateral trust deed—Reading Company to the Pennsylvania Company for Insurance on Lives," etc., is made a part of the record as Government Exhibit No. 141. It is stipulated that so much of it shall be printed as counsel indicate.

Mr. DE FOREST. Under section 2 of article 3 the Reading Company is entitled to receive the dividends on all shares of stock which shall have been transferred to or pledged with the trustee pursuant to any provision of the mortgage deed or which shall be subject to the lien thereof; and that section also contains other provisions with regard to the delivery of orders by the trustee, etc.

I am also asked: "Q. Does The Central Railroad of New Jersey own any stock in any other anthracite coal company than the Lehigh and Wilkes-Barre, and if so, how much? Or does The Lehigh and Wilkes-Barre Coal Company own any stock in any other anthracite coal company, and if so, how much?"

The Central Railroad Company of New Jersey owns no stock in any other anthracite company than the Lehigh and Wilkes-Barre. The Lehigh and Wilkes-Barre Company itself owns a small minority interest in the stock of the so-called Alliance Coal Company.

I am also asked the following question: "Q. The statement furnished to the Government shows that The Central Railroad Company of New Jersey owns $8,462,650 of the capital stock of The Lehigh and Wilkes-Barre Coal Company, the total outstanding being $9,212,500. Is any of the remaining portion of the Lehigh and Wilkes-Barre Company's stock, which may stand in the names of other persons or corporations for one purpose or another, in fact owned beneficially by The Central Railroad of New Jersey?" To that I answer, No.

I am also asked: "Q. Is not all the anthracite coal purchased under the 65 per cent contracts by The Lehigh and Wilkes-Barre Coal Company produced in the Wyoming region?" To that I answer, Yes.

I am also asked the following question: "Q. Does not all the coal purchased by the Lehigh and Wilkes-Barre Company under 65 per cent contracts and shipped to New York Harbor—in fact, does not all anthracite shipped to New York Harbor by the Lehigh and Wilkes-Barre Company come over the railroads operated by the Central Railroad Company of New Jersey?" To that I answer, Yes.

I am also asked this question: "Q. Are not W. W. Ruley's general average f. o. b. prices, New York Harbor, taken as the basis of settlement under the 65 per cent contracts made by the Lehigh and Wilkes-Barre Company with other coal producers?" I so understand.

I am also asked this question: "Q. Has not a considerable portion of the coal purchased by The Lehigh and Wilkes-Barre Coal Company under the 65 per cent contracts always been shipped to New York Harbor f. o. b. and sold?" To that I answer, Yes; and the statement that I furnished to you gave that proportion for the year 1907.

Mr. Torrey, counsel for The Delaware and Hudson Company, presented the statements marked Government Exhibits Nos. 120 to 126, inclusive, in response to a subpœna duces tecum calling for the same, duly issued and served upon F. Murray Olyphant, secretary of The Delaware and Hudson Company. Counsel for that company admits that said statements were compiled from the books and records of the companies named therein and may be treated in all respects as if produced by said officer before the examiner in obedience to the subpœnas and introduced in evidence by the Government. The right is reserved by counsel to object to any matter contained in said statements because irrelevant or immaterial or incompetent as to substance.

Government Exhibit No. 120 shows the names of the officers and directors of The Delaware and Hudson Company and the total amount of its capital stock, and so forth.

Government Exhibit No. 121 shows the total freight tonnage of The Delaware and Hudson Company for the year 1907, what portion of it consisted of anthracite coal, the gross freight earnings of that company for the same year, and so forth.

Government Exhibit No. 122 shows the names of the producers of anthracite coal whose collieries are located upon the railroads operated or controlled by The Delaware and Hudson Company, and so forth.

Government Exhibit No. 123 shows the names of the officers and directors of the Hudson Coal Company, the Northern Coal and Iron Company, the Jackson Coal Company, the Schuylkill Coal and Iron Company, the Shanferoke Coal Company, and the capital stock of each of said companies and the portion thereof owned by The Delaware and Hudson Company, or by some corporation controlled by it, and so forth.

Government Exhibit No. 124 shows the number of acres of land in the anthracite-producing area of Pennsylvania owned, leased, or held by other tenure by The Delaware and Hudson Company and its subsidiary companies, and so forth.

Government Exhibit No. 125 shows the acquisitions of coal lands by The Delaware and Hudson Company since January 1, 1896, and so forth.

Government Exhibit No. 126 is a statement of coal purchased at the mines by The Delaware and Hudson Company, and so forth.

(Adjourned to 10.30 o'clock a. m. on Wednesday, October 28, at the office of the United States district attorney, in the city of Philadelphia, Pa.)

Met pursuant to adjournment at room 324, Post-Office Building, Philadelphia, Pa., Wednesday, October 28, 1908, at 10.30 o'clock a. m.

Present: The Examiner; James C. McReynolds, esq., and G. Carroll Todd, esq., for the United States; and Adelbert Moot, esq., J. F. Schaperkotter, esq., J. H. Torrey, esq., Everett Warren, esq., Robert W. de Forest, esq., and J. D. Campbell, esq., for various defendants.

WILLIAM R. TAYLOR, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. What is your residence and occupation?—A. I reside 6445 Drexel road, Philadelphia, and I am the secretary of the Reading Company, and also vice-president.

Q. How long have you been secretary of the Reading Company?—A. Since 1902. Previous to that time I had been secretary, before some changes were made. I have been vice-president of the company since 1897.

Q. What connection have you with the Philadelphia and Reading Railway Company?—A. I am secretary.

Q. How long have you been such secretary?—A. Since its organization, in 1896.

Q. What connection have you with The Philadelphia and Reading Coal and Iron Company?—A. Vice-president. I think I was made one of the vice-presidents of The Philadelphia and Reading Coal and Iron Company in 1897.

Q. What connection had you with The Philadelphia and Reading Railroad Company?—A. I was secretary of The Philadelphia and Reading Railroad Company from 1886 up to the time of the foreclosure, in 1896.

Q. What connection, during the years from 1886 to 1896, did you have with The Philadelphia and Reading Coal and Iron Company?—A. No connection whatever.

Q. What is the par value of the shares of the Reading Company?—A. Fifty dollars a share.

Q. And of the Philadelphia and Reading Railway Company and of The Philadelphia and Reading Coal and Iron Company?—A. Each $50 a share.

Q. What part of the capital stock of the Philadelphia and Reading Railway Company is owned by the Reading Company?—A. All of the capital stock of the railway company is owned by the Reading Company.

Q. That stock is hypothecated, is it not, with some trust company?—A. It is deposited with the Central Trust Company of New York, as trustee of the general mortgage of the Philadelphia and Reading Railway Company.

Q. To secure these mortgage bonds?—A. Yes, sir.

Q. Does the stock stand on the books of the Philadelphia and Reading Railway Company in the name of the Central Trust Company of New York?—A. Yes, sir.

Q. At the stockholders' meetings of the Philadelphia and Reading Railway Company, how is that stock voted?—A. By proxy given by the Central Trust Company of New York and the Reading Company jointly.

Q. What do you mean by that?—A. The proxy is executed by the Reading Company and the Central Trust Company of New York, as trustee.

Q. You mean the proxy is executed by those parties jointly?—A. Yes, sir.

Q. Who has held that proxy?—A. The president of the Philadelphia and Reading Railway Company, for the time being; Mr. Harris, when he was president of the Philadelphia and Reading Railway Company, and Mr. Baer since that time.

Q. At all meetings of the Philadelphia and Reading Railway Company since 1896 the President of the Reading Company has held the proxy to vote the shares?—A. The president of the Philadelphia and Reading Railway Company; yes, sir.

Q. And the president of the Philadelphia and Reading Railway Company and the president of the Reading Company has been the same individual?—A. Yes, sir.

Q. Who owns the share capital of The Philadelphia and Reading Coal and Iron Company?—A. The Reading Company.

Q. In whose name do those shares stand on the books of the coal company?—A. In the name of the Central Trust Company of New York, trustee.

Q. How are those shares voted at the stockholders' meetings of the coal company?—A. By proxy executed by the Central Trust Company and the Reading Company jointly.

Q. And who has held that proxy since 1896?—A. The president of The Philadelphia and Reading Coal and Iron Company.

Q. And the president of The Philadelphia and Reading Coal and Iron Company during all these years has been the same person who was the president of the Reading Railway Company and of the Reading Company, has he not?—A. Yes, sir.

Q. Are dividends paid on the capital stock of the Philadelphia and Reading Railway Company?—A. Yes, sir.

Q. To whom are they paid?—A. Paid to the Reading Company.

Q. When did the Philadelphia and Reading Railway Company begin to pay dividends upon its capital stock to the Reading Company?—A. I am not sure that I can give the date. I think it was about 1902.

Q. Have such dividends been paid each year since that time?—A. Yes, sir.

Q. Can you tell us what those dividends have been?—A. For the last two years, I think, they have been at the rate of 30 per cent. Previous to the last two years, I think 20 per cent.

Q. For how long?—A. I am not sure that they paid 20 per cent. I think 15 per cent was the first.

Q. And then they were increased to 20?—A. Yes, sir.

Q. And then increased to 30?—A. Yes, sir.

Q. During the last two years the dividends have been 30 per cent?—A. Yes, sir.

Q. Are dividends paid on the capital of The Philadelphia and Reading Coal and Iron Company?—A. No, sir.

Q. Have any dividends ever been paid on the share capital of that company?—A. No, sir.

Q. What do its annual statements show in the way of profits or loss? I mean of The Philadelphia and Reading Coal and Iron Company?—A. The Philadelphia and Reading Coal and Iron Company, for the year ending June 30, 1908, showed sufficient income to pay to the Reading Company interest on the amount that stands on the books of the Reading Company against The Philadelphia and Reading Coal and Iron Company, amounting to about $80,000,000, at the rate of 2 per cent, and it had a small surplus beyond that.

Q. For the years prior to the year 1908, what was the showing as the result of the years' work?—A. The Philadelphia and Reading Coal and Iron Company has been able to pay to the Reading Company interest on that sum that I mentioned from the year 1902, I think it is.

Q. At the rate of 2 per cent?—A. No; they began at 1½ per cent, and then 1¾, and reached 2 per cent; and 2 per cent has been the highest.

Q. Is that $80,000,000 in the form of bonds?—No, sir.

Q. What shape is it in?—A. It is a charge on the books of the Reading Company against The Philadelphia and Reading Coal and Iron Company.

Q. For money advanced upon account?—A. Money that had previously been advanced by the old Philadelphia and Reading Railroad Company, which was carried over in the reorganization.

Q. Do I understand that the old Philadelphia and Reading Railroad Company advanced out of its treasury to The Philadelphia and Reading Coal and Iron Company a sum amounting to eighty millions of dollars?—A. No, sir. The present $80,000,000 does not represent all of those advances that had previously been made by the Philadelphia and Reading Railroad Company, because since the reorganization the coal company's bonds out at the time of the reorganization, amounting to $12,000,000, have been replaced by general-mortgage bonds of the Reading Company, and the Reading Company has, therefore, charged against the coal company a corresponding amount.

Q. Prior to the reorganization and the formation of the Reading Company the old Philadelphia and Reading Railroad Company had advanced at least $80,000,000 out of its treasury to The Philadelphia and Reading Coal and Iron Company?—A. No; as I explained, the amount was not eighty millions of dollars at that time. I think at

the time of the reorganization the amount due by the coal company to the old Philadelphia and Reading Railroad Company was probably sixty-eight or seventy millions of dollars.

Q. And the rest is made up by this $12,000,000 bond transaction which you have just explained?—A. Yes, sir.

Q. When did the Reading Company acquire the shares of the Philadelphia and Reading Coal and Iron Company?—A. They were transferred to the Reading Company by Messrs. Coster and Stetson at the time of the foreclosure sale of the property of The Philadelphia and Reading Railroad Company in 1896.

Q. Do you know when The Philadelphia and Reading Railroad Company first acquired the shares of The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir. At the time of the organization of The Philadelphia and Reading Coal and Iron Company, in 1871.

Q. Did it acquire all the shares of the coal company at that time?—A. Yes, sir.

Q. And held them until the time they were sold out in 1896 under the receiver's proceeding?—A. Yes, sir.

Q. Has The Philadelphia and Reading Coal and Iron Company ever paid a dividend since 1870?—A. No, sir.

Q. On the statement showing the collieries along the lines of the Philadelphia and Reading Railway Company there are certain columns headed "Weigh scale" and "Manifesting point." What is the meaning of that term "Weigh scale?"—A. I am not sufficiently familiar with that to say.

Judge CAMPBELL. The various weight scales on the lines of the Philadelphia and Reading Railway Company are the points to which laden cars of coal are carried from the various collieries over its various lateral lines. There these cars are weighed and afterwards put in course of transportation to destination in trains. The manifesting point is where the billing is done, where the bills of lading and the shipping receipts showing the ownership of the property while it is in transit are made out.

By Mr. MCREYNOLDS:

Q. Does the Reading Company or the Philadelphia and Reading Railway Company own stock in any anthracite coal company except The Philadelphia and Reading Coal and Iron Company?—A. The Philadelphia and Reading Railway Company does not own stock in any coal company at all. But the Reading Company has an interest in some of the subsidiary companies of The Philadelphia and Reading Coal and Iron Company, such as the Fulton Coal Company, the Mammoth Vein Coal and Iron Company, the Locust Gap Improvement Company, the Preston Company, and probably a few others. As far as The Philadelphia and Reading Railway Company is concerned, it has no interest in any coal company.

Q. What is the relationship between the Reading Company and the Reading Iron Company?—A. The Reading Company is the owner of all the capital stock of the Reading Iron Company.

Q. What business is the Reading Iron Company in?—A. The manufacture of pipe, large machinery, cotton presses, etc.

Q. Where are its works located?—A. At Reading, Pa.

Q. What is its capital stock?—A. A million dollars.

Q. How long has it been in operation there?—A. It has been in operation as the Reading Iron Company, I think, since about 1883 or 1889; but it has been in existence, under different ownership, for probably thirty-five years.

Q. Was all the stock of the Reading Iron Company owned by the old Philadelphia and Reading Railroad Company?—A. Yes, sir. This stock has been deposited by the Reading Company with the Central Trust Company of New York as trustee of its general mortgage.

Q. What is the relation between the Reading Company and the Port Reading Railroad?—A. The Reading Company is the owner of all the capital stock of the Port Reading Railroad Company.

Q. Where is the Port Reading Railroad?—A. The Port Reading Railroad runs from a point near Bound Brook, N. J., to Port Reading, a point on the Kill von Kull.

Q. Port Reading is a tide-water port on the New York lower bay?—A. Yes, sir.

Q. Port Reading Junction is the point near Bound Brook, from which the road starts, is it not?—A. Yes, sir.

Q. How long is the line of this Port Reading Railroad?—A. I am not sure I can give you the mileage of it.

Q. Give us approximately?—A. I should say between 25 and 30 miles.

Q. When was this road constructed?—A. I should say in 1890, or 1891.

Q. By what company was it constructed?—A. It was promoted by The Philadelphia and Reading Railroad Company.

Q. And constructed in the name of the Port Reading Railroad Company, was it?—A. Yes, sir.

Q. Is the Port Reading Railroad Company a New Jersey corporation?—A. Yes, sir.

Q. Was all of the stock of the Port Reading Railroad Company owned by The Philadelphia and Reading Railroad Company?—A. Yes, sir.

Q. From the time it was organized until the time it was sold out under the receiver's proceedings in 1896?—A. Yes, sir.

Q. And since 1896 all the stock of that railroad company has been held by the Reading company?—A. Yes, sir.

Q. Where is the stock of this Port Reading Railroad Company now? Has it been hypothecated, or is it held in the treasury of the Reading company?—A. A million five hundred thousand dollars of that stock has been deposited with the Central Trust Company of New York as trustee of the Philadelphia and Reading Railway Company's general mortgage, and in the neighborhood of $500,000 worth of stock has been deposited with the Pennsylvania Company for In-

surances on Lives and Granting Annuities, trustee of the Reading Company's Jersey Central collateral trust loan.

Q. Am I right in concluding from what you have said that The Philadelphia and Reading Railroad Company originally furnished all the money for the construction of this Port Reading Railroad?—A.—Yes, sir; at the time of the foreclosure all the stock of the Port Reading Railroad Company had not been issued. I think a million and a half had been issued then. Since that time the Port Reading Railroad Company has delivered to the Reading Company the $500,000 of stock to represent advances that had not been represented by the stock previously.

Q. Since the organization of the Port Reading Railroad Company in 1890 who have been its presidents?—A. The president has always been identical with the president of The Philadelphia and Reading Railroad Company and the Philadelphia and Reading Railway Company.

Q. Have the operating officers been the same as the operating officers of The Philadelphia and Reading Railroad Company?—A. Practically.

Q. What has been the arrangement between the two corporations in reference to through shipments of freight?—A. I am not familiar with that.

Q. Were you the secretary of The Philadelphia and Reading Railroad Company at the time this Port Reading Railroad Company was projected and constructed?—A. Yes, sir.

Q. What was the purpose of its construction?—A. To furnish The Philadelphia and Reading Railroad Company with an outlet to New York Harbor.

Q. Since the construction of this Port Reading Railroad Company has it been operated as a part of the system of The Philadelphia and Reading Railroad Company and of the Philadelphia and Reading Railway Company?—A. Practically; yes, sir.

Q. And utilized by it for the purpose of sending through freight to tide water and New York Harbor?—A. Yes, sir.

Q. Can you describe to us the general course over which coal carried by the Philadelphia and Reading Railway Company moves from the coal regions in Pennsylvania to tide water at New York Harbor?—A. It would not be from any accurate knowledge that I have on that subject. I could give you just general information that I have.

Q. Please do so.—A. The coal comes down the main line, which is from the vicinity of Pottsville, generally, to a point on the main line near Bridgeport, and there it either crosses the river and goes by the Plymouth branch to the junction with the North Pennsylvania Railroad at Jenkintown, or else it goes all the way to Philadelphia, and goes by way of Wayne Junction and thence to the North Pennsylvania Railroad, and over the North Pennsylvania Railroad to the middle of the Delaware River, Yardley, and there it goes on the

Delaware and Bound Brook Railroad, which is a leased line of the Philadelphia and Reading Railway Company, and proceeds to Port Reading Junction and thence to Port Reading at tide.

Q. What do you mean by the North Pennsylvania Railroad?—A. The North Pennsylvania Railroad is one of the Philadelphia and Reading Railway Company's leased lines. The Plymouth Railway is also.

Q. What dividends are paid by the Reading Company to its stockholders?—A. The Reading Company pays 4 per cent per annum on all of its issues, being first preferred, second preferred, and common stock.

Q. How long has it paid 4 per cent?—A. It paid 4 per cent on its common stock, I think, since 1904, and on the second preferred probably a year or two previous to that, and on the first preferred for a longer period.

Q. What are the sources from which the Reading Company derives its income?—A. Principally from its investment in the securities of other corporations. It has some income from real estate it owns, but that is not very large.

Q. What is the principal corporation from which it derives its income?—A. From the Philadelphia and Reading Railway Company.

Q. What proportion of its income is derived from the Philadelphia and Reading Railway Company?—A. I do not know that I can give you the percentage. I should say that it was at least 75 per cent.

Q. Were you connected with the National Company at the time when its name was changed to the Reading Company?—A. Yes, sir; I was the secretary of that company.

Q. Were you connected with that company when it was called the Excelsior Enterprise Company?—A. No, sir.

Q. You were secretary of the National Company at the time its name was changed to the Reading Company?—A. Yes, sir.

Q. What was its business at that time?—A. The National Company at that time merely kept up its organization, held its annual meetings regularly, and elected officers every year.

Q. It had no other business except to preserve its organization?—A. That is all.

Q. How long had that condition of affairs existed with the National Company before its name was changed to the Reading Company?—A. Our experience with the National Company was in connection with the lease of the Delaware and Bound Brook Railroad, which was in 1879. Among the assets of the Delaware and Bound Brook Railroad Company that we received in connection with the lease we acquired the stock of the National Company.

Q. Then from 1879 until its name was changed to the Reading Company the National Company had no business, except to preserve its organization?—A. I will not say it had no business. I say that is all it did.

Q. Did it own any property?—A. I believe there were some securities of some old railroads that it had been interested in previously.

Q. That were substantially worthless?—A. That had no value.

Q. Do you remember what the capital stock of the National Company was?—A. Fifty thousand dollars.

Q. Did it pay any dividends?—A. No, sir.

Q. Who was its president?—A. At the time of the reorganization?

Q. Yes.—A. Mr. Joseph S. Harris.

Q. And had its president always been the president of The Philadelphia and Reading Railroad Company?—A. Yes, sir.

Q. You were the secretary of the Reading Company when it acquired 145,000 shares of the capital stock of The Central Railroad Company of New Jersey, in January of 1901, were you not?—A. I am not sure that I was secretary at the time, but I was the vice-president.

Q. You were either vice-president or secretary?—A. Yes, sir.

Q. Who negotiated that purchase?—A. Mr. George F. Baer, I think.

Q. Do you remember the price paid for those shares of The Central Railroad Company of New Jersey?—A. $160 a share.

Q. How did the Reading Company get the money to pay that purchase price?—A. The Reading Company sold its issue of $23,000,000 Central Railroad Company of New Jersey collateral trust bonds, and certain shares of first and second preferred stock, I think.

Q. And the shares which it acquired in The Central Railroad Company of New Jersey were hypothecated to secure those bonds?—A. Yes, sir.

Q. Were those shares of The Central Railroad Company of New Jersey acquired by an exchange of these securities or were the securities sold in the market and the cash paid to the holders of the shares of the Central Railroad Company?—A. The stock of the Central Railroad Company was purchased for cash.

Q. The Reading Company still owns these 145,000 shares of Central Railroad Company of New Jersey stock?—A. Yes, sir.

Q. How are those shares voted in the stockholders' meetings of The Central Railroad Company of New Jersey?—A. By a proxy given by the Pennsylvania Company for Insurances on Lives, etc., as the trustee, executed jointly with the Reading Company as the beneficial owner.

Q. Who has held that proxy?—A. Mr. Baer, the president.

Q. Are dividends paid on these shares of The Central Railroad Company of New Jersey?—A. Yes, sir.

Q. To whom?—A. To the Reading Company.

Q. What interest has the Reading Company in the equipment used by the Philadelphia and Reading Railway Company?—A. The Reading Company is the owner of all of the equipment, subject to a pledge of a large part of that equipment with the Central Trust Company of New York, as trustee of its general mortgage.

Q. You mean by that, do you, that the Reading Company owns all the engines and cars, which are operated by the Philadelphia and Reading Railway Company?—A. Yes, sir.

Q. What is the arrangement between the Reading Company and the Philadelphia and Reading Railway Company in reference to that equipment?—A. The railway company pays a fixed rental for the use of that equipment to the Reading Company.

Q. Has that been the arrangement which has existed between the Reading Company and the Philadelphia and Reading Railway Company since 1896?—A. Yes, sir.

Q. You were connected with The Philadelphia and Reading Railroad Company at the time The Port Reading Railroad Company took a lease of the Jersey Central Railroad Company, were you not?—A. Yes, sir.

Q. Do you know whether about that same time a contract was made by The Lehigh and Wilkes-Barre Coal Company agreeing to sell its output of coal to The Philadelphia and Reading Coal and Iron Company?—A. I know there was some contract made at that time, but I do not recall the nature of it.

Q. Have you access to those records?—A. Yes, sir.

Q. If there is such a contract, will you produce a copy of it and make it Government Exhibit No. 142 to your deposition?—A. Yes, sir.

Q. About this same time, do you know whether The Philadelphia and Reading Railroad Company took a lease of the Lehigh Valley Railroad Company's lines?—A. Yes, sir.

Q. Do you remember the date of that?—A. February, 1892, I think it was.

Q. What became of that lease?—A. That lease was surrendered in August, 1893.

Q. What became of the lease that was taken by the Port Reading Railroad of the Central Railroad of New Jersey?—A. That was dissolved, I think, in December, 1892.

Q. That was subsequent to the decree by the chancellor in New Jersey, holding that it was contrary to law?—A. Yes, sir.

(The witness subsequently furnished a copy of the contract dated April 30, 1892, between The Lehigh and Wilkes-Barre Coal Company and The Philadelphia and Reading Coal and Iron Company, referred to in his testimony, and it was introduced in evidence, marked Government Exhibit No. 142.)

Cross-examination by Judge CAMPBELL:

Q. You answered that you were vice-president of The Philadelphia and Reading Coal and Iron Company, as well as an official of the railway company and of the Reading Company. State whether or not as such vice-president you have any active duties whatsoever in connection with the conduct of the business of the Coal and Iron Company other than to execute documents in the name of the company when advised by counsel that they are required in the conduct of the business of that company?—A. That is all.

Q. Referring to the Port Reading Railroad Company, do you not recall that while its construction was promoted by The Philadelphia and Reading Railroad Company for the purposes which you indicate, of gaining an outlet on the New York waters for our business, that in point of fact the stock of that company was subscribed for by the Port Reading Construction Company?—A. Yes, sir.

Q. And that the Port Reading Construction Company negotiated a series of bonds provided for the Port Reading Company which were negotiated, and out of which it provided the means for constructing that railroad?—A. Yes, sir.

Q. And that in the meantime, and until after the surrender by the Port Reading Company of its lease of the properties of The Central Railroad Company of New Jersey, that stock never was held or owned by The Philadelphia and Reading Railroad Company?—A. I had forgotten that.

Q. The gentleman's question led you to say, which of course you did not mean to say, that the traffic of the Philadelphia and Reading Railroad system destined to and from points in New York Harbor is confined to the line of the Port Reading Railroad. State whether or not the fact is that no other traffic proceeds over the Port Reading Railroad except coal traffic.—A. Of course, that is what I understood he referred to.

Q. Your general merchandise and other freight traffic, besides anthracite and bituminous coal, proceed to New York Harbor over the lines of The Central Railroad Company of New Jersey from Bound Brook Junction to Jersey City?—A. Yes, sir.

Q. Also all the passenger traffic interchanged between the two companies that goes west of Bound Brook?—A. Yes, sir.

Q. The Philadelphia and Reading Railway Company also has an outlet over the lines of the Central Railroad of New Jersey at Allentown?—A. Yes, sir.

Q. Over which large quantities of traffic of bituminous coal and general merchandise are interchanged?—A. Yes, sir.

Q. And passenger traffic?—A. And passenger traffic.

Q. The Philadelphia and Reading Railway system, through its leased line, the North Pennsylvania Railroad, has another connection with the lines of The Central Railroad Company of New Jersey at South Bethlehem, through which all sorts of traffic, freight and passenger, are interchanged?—A. Yes, sir.

Q. The Philadelphia and Reading Railway system has another connection through its Catawissa Railroad leased line, with the lines of the Central Railroad of New Jersey at Tamenend?—A. Yes, sir.

Q. Where traffic is also interchanged?—A. Yes, sir.

Q. The gentleman has inquired about the dividends actually paid on the various issues of shares of the Reading Company. Your answers are somewhat confusing. Please prepare a statement showing the time of the beginning of the payment of dividends on each class of its stock from time to time up to the present, and attach this

statement to your answer as an exhibit.—A. I will look this up and furnish the information requested.

(The witness furnished the following statement:)

Statement of dividends paid by Reading Company.

Calendar year.	First preferred stock ($28,000,000).	Second preferred stock ($42,000,000).	Common stock ($70,000,000).
	Per cent.	Per cent.	Per cent.
1900	3		
1901	4		
1902	4		
1903	4	1½	
1904	4	4	
1905	4	4	¾
1906	4	4	4
1907	4	4	4
1908	4	*4	4

* Of this, 2 per cent is payable November 10, 1908.

Q. Referring to the National Company, concerning which the gentleman made some inquiries, are you familiar with the old records of that company?—A. Generally; yes, sir.

Q. You had occasion to examine into them very carefully about 1896?—A. Yes, sir.

Q. That company had been actively engaged in the construction of a line of railroad in New Jersey for some years?—A. Yes, sir.

Q. For some years prior to the 1st day of January, 1874?—A. Yes, sir.

Q. Are you familiar with the consideration that was given to that subject preparatory to its taking over the business now conducted by the Reading Company in respect of its vitality prior to the adoption of the constitution of 1874?—A. I know that. The charter was examined by counsel for the company and the question submitted to the attorney-general of the State of Pennsylvania and a decision rendered by him on the subject.

Q. Which was to the effect that it was a proper corporation?—A. Yes, sir; and had been properly conducted ever since its organization.

Q. As the result of that investigation, did the Commonwealth of Pennsylvania exact the payment of a large sum of money as a bonus on the increase of its capital stock under our statutes?—A. It did, and the money was paid.

Q. Referring now to the surrender by the Port Reading Railroad Company of the lease of the Central Railroad Company of New Jersey and to your answer to the gentleman, I ask you if you can recall that after the interlocutory injunction and decree of the court an appeal was taken by the defendants in that suit to the appellate court of New Jersey?—A. I have some recollection of that; yes, sir.

Q. And do you not recall now, since I refresh your recollection, that as a fact it was determined not to prosecute that appeal, but on account of the Port Reading Railroad Company's inability as a busi-

ness proposition to pay the rental secured by that lease it voluntarily surrendered the property?—A. Yes, sir.

Redirect examination by Mr. McREYNOLDS:

Q. You were asked about the Port Reading Construction Company, which in a practical way constructed the Port Reading Railroad. Who owned the stock of the Port Reading Construction Company?—A. My impression is that was controlled by The Philadelphia and Reading Railroad Company.

Q. And the money that was used in constructing that Port Reading Railroad Company was supplied by The Philadelphia and Reading Railroad Company?—A. Yes, sir.

Q. Do you know the arrangement which exists between the Philadelphia and Reading Railway Company and The Central Railroad Company of New Jersey under which the former company sends the freight from Bound Brook, N. J., to Jersey City?—A. Yes, sir. There is a traffic contract executed between the two companies.

Q. And freight is shipped under that traffic contract?—A. Yes, sir.

Q. On through bills of lading?—A. The agreement provides for that; yes, sir.

Q. The Philadelphia and Reading Railway Company, I presume, pays so much annually or a certain part of the freight received, for the use of the tracks of the Central Railroad of New Jersey from Bound Brook to Jersey City?—A. I do not remember just what the details of the agreement are, but it is in the form of a contract which had been made by the old North Pennsylvania Railroad Company before its property had been leased to The Philadelphia and Reading Railroad Company.

Q. That arrangement has existed how long?—A. I think that contract is dated 1876.

Q. Under that contract its freight has moved over the tracks of the New Jersey Central Railroad east from Bound Brook since 1876?—A. Yes, sir.

Q. How long does that contract continue?—A. I do not remember that it has any period to expire. I think it would expire by mutual consent of the parties. I am not sure just what the terms are.

Q. Where can that contract be found?—A. We have copies of it at the office.

Q. Will you be good enough, through Judge Campbell, to submit that contract to us so that we may, if so advised, put it on the record?—A. I will do so.

By Judge CAMPBELL:

Q. The interchange of traffic over the rails of the Jersey Central and Reading, North Penn, and Bound Brook is governed by another contract called a "new-line" contract, in which the Baltimore and Ohio Railroad Company is a party, which governs the interchange of traffic over these lines to and from the lines of the Baltimore and Ohio?—A. Yes, sir.

WILLIAM G. BROWN, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Please examine the Government Exhibits Nos. 24 to 29, inclusive, and put in the record a statement showing which of the shares of the coal companies mentioned therein are owned by The Philadelphia and Reading Coal and Iron Company.—A. The shares of the Locust Gap Improvement Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee, the Central Trust Company of New York, trustee, G. F. Baer, Joseph S. Harris, James M. Landis, W. J. Robinson, Thomas M. Richards, and E. F. Smith, are owned by The Philadelphia and Reading Coal and Iron Company.

The shares of the Fulton Coal Company, standing in the names of the following parties, are owned by The Philadelphia and Reading Coal and Iron Company, namely, the Central Trust Company of New York, trustee; the Fidelity Insurance Trust and Safe Deposit Company, trustee; George F. Baer, Joseph S. Harris, James M. Landis, W. J. Robinson, Thomas M. Richards, E. F. Smith, and H. A. Wallace.

The shares of the Delaware Coal Company, standing in the names of the Central Trust Company of New York, trustee; the Fidelity Insurance Trust and Safe Deposit Company, trustee; The Philadelphia and Reading Coal and Iron Company, George F. Baer, William G. Brown, Joseph S. Harris, C. E. Henderson, James M. Landis, William H. McEwan, W. J. Robinson, Thomas M. Richards, E. F. Smith, Theodore Voorhees, and H. A. Wallace, are owned by The Philadelphia and Reading Coal and Iron Company.

The shares of the Preston Coal and Improvement Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; George F. Baer, C. E. Henderson, J. S. Harris, James M. Landis, W. H. McEwan, W. J. Robinson, Thomas M. Richards, E. F. Smith, and H. A. Wallace, are owned by The Philadelphia and Reading Coal and Iron Company.

The shares of the Tremont Coal Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Central Trust Company of New York, trustee; George F. Baer, Joseph S. Harris, C. E. Henderson, James M Landis, W. H. McEwan, W. J. Robinson, Thomas M. Richards, E. F. Smith, and H. A. Wallace, are owned by The Philadelphia and Reading Coal and Iron Company.

The shares of the Mammoth Vein Coal and Iron Company, standing in the names of the Fidelity Insurance Trust and Safe Deposit Company, trustee; the Central Trust Company of New York, trustee; George F. Baer, C. E. Henderson, James M. Landis, The Philadelphia and Reading Coal and Iron Company, Thomas M. Richards, W. J. Robinson, E. F. Smith, and H. A. Wallace, are owned by The Philadelphia and Reading Coal and Iron Company.

By Judge CAMPBELL:

Q. The gentlemen have made you in your testimony contradict the record, which shows the legal title of those various shares to be in the names of those in whom they stand registered on the books of the company. I take it that you mean that the beneficial or equitable ownership of those shares is the property of The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir.

By Mr. MCREYNOLDS:

Q. You have said that the beneficial ownership of the various stocks that you have been referring to was in The Philadelphia and Reading Coal and Iron Company. Who votes the stock at a stockholders' meeting of these several companies?—A. They are voted by proxy. The president of the company, Mr. Baer.

Q. Who issues that proxy?—A. Generally speaking, the parties who hold the legal title give proxies to Mr. Baer, and he votes them.

Q. Do any of these coal companies pay dividends?—A. Yes, sir.

Q. Who collects the dividends?—A. The Philadelphia and Reading Coal and Iron Company receives the dividends.

Q. These statements, Government Exhibits Nos. 24 to 29, show when the stock in the several companies was acquired. Do these statements refer to the original acquisition by The Philadelphia and Reading Coal and Iron Company?—A. They represent the date at which it was transferred to the parties in whose name it stands.

Q. And at some date prior to that time it was acquired by The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir.

The witness produced a statement showing when The Philadelphia and Reading Coal and Iron Company acquired its interest in the major portion of the share capital of the several companies in question. It is as follows:

Statement of The Philadelphia and Reading Coal and Iron Company, showing the dates when it acquired its interest in the major portion of the share capital of the companies below named.

FULTON COAL COMPANY.

(Share capital, 71,219 shares.)

	Shares.
February 3, 1872	69
February 10, 1872	51,234
	51,303

LOCUST GAP IMPROVEMENT COMPANY.

(Share capital, 59,291 shares.)

February 10, 1872	1,787
March 12, 1872	40,000
April 17, 1872	3,859
June 1, 1872	1,500
	47,146

TREMONT COAL COMPANY.

(Share capital, 120,000 shares.)

	Shares.
February 10, 1872	113, 950

MAMMOTH VEIN COAL AND IRON COMPANY.

(Share capital, 69,000 shares.)

February 10, 1872	10, 713
March 12, 1872	34, 500
	45, 213

DELAWARE COAL COMPANY.

(Share capital, 5,268 shares.)

June 30, 1874	4, 716

PRESTON COAL AND IMPROVEMENT COMPANY.

(Share capital, 60,000 shares.)

January 27, 1872	500
January 29, 1872	83
February 10, 1872	51, 675
	52, 258

Q. You have furnished a statement of the number of acres of land in the anthracite region leased and subleased by The Philadelphia and Reading Coal and Iron Company and other companies to third parties?—A. Yes, sir.

Q. Are those third parties corporations or individuals with which The Philadelphia and Reading Coal and Iron Company, or the Reading Company, or the Reading Railway Company have no connection, or are they other companies in which one of those three owns an interest?—A. I think they are principally other people, individuals and corporations in which the Reading Coal and Iron Company has no interest.

Q. Do those leases contain a provision that all the coal mined out of those lands shall be shipped over the lines of the Philadelphia and Reading Railway Company?—A. Yes, sir.

Q. Do they contain provisions concerning the sale of the coal by those lessees?—A. No, sir.

Q. In order to have the record complete, state whether the statements which you have given us show the ownership of all stock in anthracite coal companies by The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir.

Q. Does the Reading Company itself own any stock in any anthracite coal company?—A. I am not connected with the Reading Company. I can not tell you.

Q. You do not know?—A. No, sir.

Q. Is all the coal purchased by The Philadelphia and Reading Coal and Iron Company produced in what is known as the Schuylkill region?—A. Yes, sir; on the lines of the Philadelphia and Reading Railway Company.

Q. But the Philadelphia and Reading Railway Company's lines go into the Lehigh region, do they not?—A. No; they may touch the Lehigh region, but all the coal that is mined by The Philadelphia and Reading Coal and Iron Company is considered as Schuylkill coal and coming from the Schuylkill region.

By Judge CAMPBELL:

Q. But not necessarily from Schuylkill County?—A. No, sir; not necessarily.

By Mr. MCREYNOLDS:

Q. Is all the coal that is purchased by The Philadelphia and Reading Coal and Iron Company produced in the Schuylkill region?—A. Yes, sir.

Q. Do you know the route which coal shipped by The Philadelphia and Reading Coal and Iron Company to New York Harbor takes in its passage to that point?—A. From general information I do, yes.

Q. Does it all go to Port Reading Junction in New Jersey, and from thence by the Port Reading Railroad to Port Reading on the New York Harbor?—A. Yes, sir.

Q. What is the freight rate paid by The Philadelphia and Reading Coal and Iron Company on coal shipped by it to New York Harbor from the collieries?—A. On prepared sizes, $1.95 per ton.

Q. What is the rate to Port Reading?—A. The rate to Port Reading is $1.95.

Q. How long has it been paying that rate?—A. For a number of years, to my knowledge.

Q. Give us, so far as you can remember it, since 1900.—A. Yes, sir.

Q. Is not the rate which you have given, $1.95, to New York, what is called alongside the wharves?—A. Yes, sir: f. o. b. alongside at Port Reading. From the harbor vessels alongside at Port Reading.

Q. Do you pay the same rate of freight on coal shipped to Port Reading, New York Harbor, upon the coals taken from all the collieries which are operated by The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir.

Q. Do you pay the same rate of freight upon all coal purchased by The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir.

Q. And shipped to Port Reading?—A. Yes, sir; that is a published tariff rate.

Q. And applies to all collieries from which The Philadelphia and Reading Coal and Iron Company either purchases coal or from which it mines coal itself?—A. Yes, sir.

Q. Does The Philadelphia and Reading Coal and Iron Company ship coals to New York Harbor over the lines of any other railroad except the Philadelphia and Reading Railway Company's?—A. No, sir.

Q. Does it ship any coal to any point except over the lines of the Philadelphia and Reading Railway Company?—A. It ships coal to

all points. It ships coal to connecting roads, interchanges coal at various junction points with other roads.

Q. But all the coal starts over the lines of the Philadelphia and Reading Railway Company?—A. Yes, sir.

Q. What rate of freight does The Philadelphia and Reading Coal and Iron Company pay on coal shipped to Philadelphia?—A. I am giving this from general information. Of course I have nothing to do with the freight rates. The freight is $1.90 on coal to Philadelphia.

By Judge CAMPBELL:

Q. You are referring to prepared sizes?—A. Prepared sizes in all cases.

By Mr. MCREYNOLDS:

Q. Is the coal that is shipped by The Philadelphia and Reading Coal and Iron Company to tide water, New York Harbor, shipped on through bills of lading to Port Reading?—A. I believe it is.

Q. How are settlements made between The Philadelphia and Reading Coal and Iron Company and the Philadelphia and Reading Railway Company for coal shipped by the former company over the lines of the latter?—A. The Philadelphia and Reading Railway Company renders The Philadelphia and Reading Coal and Iron Company a bill.

Q. How often?—A. Weekly; weekly bills.

Q. Do checks pass between the companies?—A. Do we pay our bills by checks, do you mean?

Q. You say the Philadelphia and Reading Railway Company renders a weekly bill for freight?—A. Yes, sir.

Q. How is the bill settled?—A. We pay those freight bills monthly or on account.

Q. Do you credit them on your books, or do you send them a check?—A. We credit them on our books.

Q. So the Philadelphia and Reading Railway Company renders a weekly bill to The Philadelphia and Reading Coal and Iron Company, and the amount of those bills is credited to the railway company on the books of the coal company?—A. Yes, sir.

Q. When are final settlements made, if ever?—A. They are made almost every month. At the close of each month we settle up and pay the Philadelphia and Reading Railway Company in cash. Not invariably at the end of each month, but that is when the bills are due and should be paid. Sometimes we pay them in thirty days afterwards. Sometimes sixty days.

Q. And sometimes longer still?—A. We rarely get over ninety days behind.

Q. When you pay them how do you pay them?—A. By check.

Q. Drawn on the account of the coal company?—A. Yes, sir; drawn on the banks in which the coal company has its deposit, and the check is paid to the order of the Philadelphia and Reading Railway Company.

Q. How much money every year does the Philadelphia and Reading Railway Company advance to The Philadelphia and Reading Coal and Iron Company?—A. Nothing.

Q. When did it cease to?—A. Subsequent to 1896.

Q. How long subsequent?—A. For six or seven years there have been no advances made by the Philadelphia and Reading Railway Company.

Q. Then subsequent to 1896 up to say 1902 the Philadelphia and Reading Railway Company did make advances every year to The Philadelphia and Reading Coal and Iron Company, did it not?—A. The Philadelphia and Reading Railway Company made no advances whatever. Whatever advances were made were made by the Reading Company since 1896.

Q. And not by the Reading Railway Company?—A. And not by the Reading Railway Company.

Q. Prior to 1896 was it the custom of The Philadelphia and Reading Railroad Company to make advances to The Philadelphia and Reading Coal and Iron Company?—A. I will not say that it was the custom. I have only been the secretary of the Coal and Iron Company since 1898.

Q. Were you connected with the Coal and Iron Company prior to 1896?—A. No, sir. Not prior to 1898.

Q. Have you any control over the sales of coals by the coal company?—A. No, sir.

Q. What are your general duties as secretary?—A. To keep a record of the minutes of the meetings of the board, keep a statement of the books and accounts of the company, and I am the accounting officer.

Q. What is the capital stock of The Philadelphia and Reading Coal and Iron Company?—A. Eight millions of dollars.

Q. What is its bonded indebtedness?—A. It has no bonded indebtedness except one collateral trust loan of about a million two hundred and thirty thousand dollars, I think.

Q. What is its floating debt?—A. It has no floating debt.

Q. How is the account between it and the Reading Company carried? How do you carry it on your books? It owes the Reading Company a large amount of money, does it not?—A. Yes, sir. It owes the Reading Company about eighty millions of dollars.

Q. How is that carried on your books?—A. Ledger account—credit account.

Q. Open account?—A. Open account on the ledger; yes, sir.

Q. Has that account increased or decreased?—A. It has been decreasing.

Q. The Philadelphia and Reading Coal and Iron Company buys a large amount of coal from sundry producers, upon what are known as 65 per cent contracts, does it not?—A. Yes, sir.

Q. Do you know about how much that amounts to annually?—A. The amount of money or the amount of tons?

Q. The amount of tons?—A. About a million two hundred thousand tons.

Q. Do you keep on the books of The Philadelphia and Reading Coal and Iron Company a separate account with that coal?—A. We keep a separate account of the amount of coal we purchase from each individual, and pay for that regularly during the succeeding months.

Q. You keep a separate account showing the disposition of that purchased coal?—A. No, sir.

Q. Is there anything on your books to show the result of those transactions of purchase to the company?—A. Nothing on the books of the company; no, sir.

Q. Your books do not show, then, whether these purchases make you a profit or a loss?—A. We keep a record of the kinds and sizes of this coal that we purchase, and we also keep a record of the sales of all coal.

Q. Of that particular coal?—A. All the coal that is sold direct, we keep an account of the sales. All that is not sold during the month, which goes to our different stock points, there is a record of.

Q. Is there anywhere on your books the information which would enable you to determine the result of these 65 per cent contracts to your company?—A. I make statements up that show—all the purchased coal that we do not sell during the month we consider as sold. I make a statement up on that basis, and making it up on that basis, we make a profit on the purchased coal.

Q. Do you make a profit on the purchased coal which you send to New York Harbor?—A. On our total purchased coal? I could not say with regard to New York Harbor particularly. On our total purchased coal we make a profit.

Q. On the part you send to New York Harbor, what is the result?—A. I never kept a record of that which we sent to New York Harbor.

Q. You are unable to say?—A. I am unable to say.

Cross-examination by Judge CAMPBELL:

Q. You say that your official connection with The Philadelphia and Reading Coal and Iron Company does not go back of the year 1898?—A. 1898; yes, sir.

Q. Prior to December, 1896, you were in the service of the receivers of The Philadelphia and Reading Coal and Iron Company and The Philadelphia and Reading Railroad Company?—A. Yes, sir.

Q. Those receivers were appointed under the decree of this court in February, 1893. Do you recall that?—A. Yes, sir.

Q. They continued in the conduct and operation of the business under the orders and direction of this court, both companies, from 1893 to 1896, inclusive?—A. Yes, sir.

Q. Up to the 1st day of December, 1896?—A. Yes, sir.

Q. So that whatever may have been the relations between the two companies, or the records of the two companies, were the operations of the officers of this court—that is to say, the receivers?—A. Yes, sir.

Q. You have stated in answer to the gentlemen that the Coal and

Iron Company has no funded or bonded debt, with a small exception, which you referred to. State whether or not The Philadelphia and Reading Coal and Iron Company is a joint obligor in the issue of the so-called general-mortgage Reading bonds.—A. They are.

Q. Although those obligations are not carried on the books of your company as its funded debt or obligation?—A. Yes, sir.

Q. With respect to the operations of your coal purchases, while you say the books themselves—that is to say, the formal entries on your books of accounts—do not immediately and directly show the result of the operations, I understand you to have stated that you keep up a continual analysis of the course of that business by memoranda and statements prepared from time to time, which show the results of all these operations to be that they have been profitable?—A. Yes, sir.

Q. These statements are prepared in your department for exhibition to the management from time to time for their information?—A. Yes, sir.

Q. And while they are not in form of ledger book entries, they are among the records of the papers of the company?—A. Yes, sir.

Redirect examination by Mr. McREYNOLDS:

Q. You said a while ago that The Philadelphia and Reading Coal and Iron Company were joint obligors upon the general mortgage bonds of the Reading Company?—A. Yes, sir.

Q. Do you know whether the Philadelphia and Reading Railway Company is also a joint obligor upon those same bonds?—A. No, sir; they are not.

By Judge CAMPBELL:

Q. In your reference to the tariff rates on coal f. o. b. you stated the tariff rate is $1.95 f. o. b. New York Harbor. Is it not a fact that by the application of a reduction of that rate the tariff rate is in fact $1.55 and not $1.95?—A. $1.55 would be the net tariff rate.

By Mr. McREYNOLDS:

Q. What do you mean by the application of a reduction in the rate?—A. Allowance for discharging and other expenses in connection.

Q. Allowances to whom?—A. To the shipper.

Q. What do you mean by allowances for discharging and other expenses?—A. It is printed in the regular tariff rate.

Q. Is that all specified in the printed published rate?—A. Yes, sir.

Q. So that the net rate to the shipper is what?—A. $1.55 on prepared sizes.

Q. Who else ships coal from the Schuylkill region to New York Harbor over the lines of the Philadelphia and Reading Railway Company except The Philadelphia and Reading Coal and Iron Company?—A. Sundry individual shippers.

Q. Which is the largest shipper?—A. I could not say. I am not familiar enough with that to say.

Q. Who are among the largest shippers?—A. I could not say. I do not know who are among the largest shippers.

Q. Is there anybody who ships as much as half a million tons from that region?—A. I think not.

Q. Is there anybody who ships as much as 100,000 tons from that region?—A. I am not familiar enough to say. Our coal sales department could tell you.

By Judge CAMPBELL:

Q. You have no official or other connection or relations with those independent shippers?—A. None whatever.

Q. You have no means of knowing the details of their business or any part of it?—A. No, sir.

Q. Or of the shipments made by them over the railway company?—A. No, sir.

Q. That is not in your charge?—A. No, sir. I have no familiarity with it at all.

(At 1 o'clock a recess was taken until 2 o'clock p. m.)

Dr. HERBERT M. HOWE, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Where is your residence?—A. 1622 Locust street, Philadelphia.

Q. What is your occupation?—A. I am a member of the firm of A. Pardee & Co., coal operators.

Q. Are you a partner in that firm?—A. Yes, sir.

Q. How long have you been connected with that firm?—A. I can not give you exactly the year, but in the early nineties, as member of the firm, and closely associated with it for a much longer time than that.

Q. What is the business of A. Pardee & Co.?—A. Mining coal.

Q. What sort of coal, and where?—A. Anthracite coal, at Hazleton.

Q. Do they own collieries?—A. No; they lease collieries.

Q. Have they ever owned collieries?—A. I think not.

Q. From whom do they lease?—A. From the Cranberry Improvement Company.

Q. How many collieries do A. Pardee & Co. operate?—A. Two.

Q. How long have they been operating those collieries?—A. I am not quite sure, those particular ones, but they have been operating collieries since in the early fifties, I think. I am answering as I believe. I am not sure as to the date. Mr. Fell and Mr. Pardee were the original members of A. Pardee & Co., and they were almost the pioneers as coal operators in that district, and they once operated quite a number of mines that now the Lehigh Valley are operating, the old Hazleton mine and several others.

Q. How much coal have A. Pardee & Co. taken out of these two collieries on an average during the last five years?—A. I do not

remember exactly the amount. I can tell you this, that when conditions are favorable, barring accidents, we can get out about 2,000 tons a day.

Q. About how much do you get out. I do not mean to be accurate to the thousand tons, but give us an approximate idea of your actual output.—A. I would like to answer you accurately in a matter of that kind, for I do not remember the figures exactly, and I have to guess.

Q. Have you mined during the last five years to your capacity?—A. As far as we could get cars; yes, sir.

Q. That is what I want to get at.—A. I am telling you.

Q. Have there been times during the five years when you could not get cars?—A. Yes, sir; there have.

Q. How much has it reduced your output from what it would have been if you could have gotten cars?—A. That I can only guess at. I can not tell you. There have been times when our output has been interfered with from breakages in our apparatus, you know; that is one thing that stops us. If everything runs favorably, we can get out 2,000 tons a day.

Q. Have you mined during the last five years on an average 500,000 tons annually?—A. In that neighborhood, I should say.

Q. What do you do with the coal that you mine?—A. It is sold to the Lehigh Valley road.

By Mr. SCHAFERKOTTER:

Q. Lehigh Valley who?—A. The Lehigh Valley take it; The Lehigh Valley Coal Company, I suppose.

By Mr. MCREYNOLDS:

Q. Under what sort of an agreement are these coals sold?—A. By the same contract that was made, I think, with a good many other operators—65 per cent of the tide price.

Q. Is there a written contract existing between A. Pardee & Co. and The Lehigh Valley Coal Company?—A. There is; yes.

Q. When was it entered into?—A. There again I have to guess—several years ago.

Q. Can you fix it by any public event, the date of this contract?—A. No; I can not.

Q. Was it subsequent to the coal strike of 1902, or prior to that time?—A. It was prior to the strike in which Mr. Roosevelt took part.

Q. It was about 1901, was it not?—A. I should say in that neighborhood. I can not give the date accurately, so I do not profess to give it.

Q. Under the terms of that contract do all the coals that are mined by A. Pardee & Co. go to The Lehigh Valley Coal Company?—A. They are all taken at the collieries in their cars.

Q. That contract covers the life of the collieries, does it not?—A. The life of the collieries, so far as we are concerned; our lease

has five years more to run. If they are emptied in that time, it covers the life of the collieries. If not, it depends on whether it is renewed.

Q. It covers the length of your lease, at all events?—A. It covers the length of the lease.

Q. Do you know what becomes of the coals that your company delivered to The Lehigh Valley Coal Company under those contracts?—A. They sell it, for all I know.

Q. But do you know where they sell it?—A. No; I do not.

Q. You do not know to what markets it goes?—A. I do not.

Q. Where do your company deliver that coal, and how?—A. At the breakers, into the cars.

Q. To whom do you deliver it?—A. We put it in the cars that, I suppose, belong to The Lehigh Valley Coal Company.

Q. Does The Lehigh Valley Coal Company own cars?—A. I do not know. I can not trace the ownership of those cars. The cars on the Lehigh Valley tracks come under our colliery and receive the coal and take it away.

Q. That is all you know about it?—A. That is all I know about it.

Q. Where is the coal weighed?—A. It has been weighed at Packerton, I believe. We now have our own scales at the mine and have recently begun weighing coal ourselves.

Q. Are settlements made to you upon the weights at the breakers?—A. Yes, sir; I do not know that they may not weigh the coal again at Packerton, as this is a recent arrangement, our weighing the coal.

Q. Where is Packerton as related to your colliery?—A. It is in the neighborhood of Mauch Chunk.

Q. How far is that from your colliery?—A. There I can only guess. I do not know how many miles. I have been from one place to the other, but I do not know.

Q. Is it 10 miles or 50 miles?—A. I should guess it was 30, but I do not know.

Q. Is it on the line of the Lehigh Valley Railroad?—A. It is; yes.

Q. When the coal was weighed at Packerton, was your partnership settled with upon the weight at that point?—A. Yes, sir; so far as I know.

Q. The amount that you got depended upon the average price of coal at New York Harbor f. o. b.?—A. At tide; yes.

Q. In what region are the collieries operated by Pardee & Co.?—A. They are in Hazleton, Luzerne County.

Q. Is that in the Lehigh region?—A. In the Lehigh region.

Q. You are settled with upon the average prices of coal from the Lehigh region, are you not?—A. Yes, sir.

Q. Prior to the time that A. Pardee & Co. entered into the present existing contract with The Lehigh Valley Coal Company, how did it dispose of the coals produced?—A. Primarily, in the earlier history of the firm, the coal was sold by ourselves in various places, and the

first contract that was made for selling coal was made with the Reading Railroad.

Q. When was that?—A. The date of it I do not remember; you probably know. I should think it was about the time that the Reading absorbed the Lehigh Valley and the Jersey Central.

Q. What was the nature of that contract?—A. As I recollect—I am not sure about it—we got 60 per cent of the tide price.

Q. And delivered the coal at your breakers?—A. The same as we do now, exactly.

Q. And to the same railroad company?—A. Yes, sir.

Q. Prior to that contract with the Reading for the sale of the coals of Pardee & Co. you say they were sold by the partnership itself in the various markets?—A. Yes; we had a department in New York and sold coal to customers anywhere in the country.

Q. Over what lines did you ship the coal at that time?—A. The only line that reaches the breakers is the one I have already designated.

Q. That is the Lehigh Valley?—A. Yes, sir.

Q. Where is the first point that your coal could have been put on the line of some other system of railroad?—A. I am not sufficiently familiar with the various railroad connections to answer that question correctly. We always delivered the coal, whether we sold it ourselves, whether we marketed it to the consumer or to the railroad company; it always went in the cars of the Lehigh Valley, because that was the only line that reached our collieries and our only method of getting to market.

Q. So your coal had to start over its rails?—A. Yes.

Q. You do not know at what point it could have gone over the rails of other systems?—A. No; it could have been transshipped at any point where other lines meet that road.

Q. What freight rate prior to the time that you made this first contract with the Reading road was charged on prepared sizes to New York?—A. I do not know.

Q. Was it more or less than now?—A. I do not know.

Q. Were you acquainted with the other operators in the Lehigh region prior to the time you first made a contract with the Reading for the sale of the coals?—A. You mean personally acquainted with them? I knew some of them; yes.

Q. Were there many independent operators there prior to 1892?—A. I do not know how many; there were a good many operators, I suppose.

Q. Did they have independent selling arrangements through which they sold their coal?—A. Some had, I believe, and some did not.

Q. Do you know when this plan of selling coal to the coal companies controlled by the various railroad systems was inaugurated?—A. I do not know that date.

Q. Were you at any time connected with what was called the Independent Anthracite Operators' Association?—A. I was.

Q. What was your connection with it?—A. I was vice-president of it.

Q. What was that association?—A. It was simply an association of individual operators who believed that they could improve their interests by getting together.

Q. It was a voluntary association, was it?—A. Entirely.

Q. When was that association formed?—A. I can not tell you the date.

Q. Can you give us it approximately?—A. No; I can not.

Q. Was it as early as 1890?—A. I should think very probably it was, but I really do not remember the date.

Q. What was the line along which that association proposed to operate in order to better the conditions of the independents?—A. They always believed that the 60 per cent was an unfair settlement for that coal, and I think perhaps in part the influence of that association resulted in an increase to 65 per cent. But that is only an opinion. I do not know whether it has or not. At any rate, that was the effort of the association, to better those rates of settlement.

Q. Was that association in operation before Pardee & Co. entered into the contract to sell their coals on a percentage basis?—A. No; I think not.

Q. How many members of that independent association were there?—A. I could only give the crudest kind of a guess. It was very general. It was exceptional where an individual operator was not a member at some time; but I can only guess as to the number.

Q. Give us the best of your recollection about it. You must know something about it.—A. I guess 60 or 70.

Q. How many of those men are now producing coal?—A. I do not know.

Q. Prior to the time that Pardee & Co. entered into this 60 per cent arrangement for the sale of their coal, how was the freight rate which they should pay upon coal transported to New York determined?—A. I was not a member of the firm at that time. I really have no knowledge of the details of those arrangements. I had nothing to do with the firm at that time.

Q. Who would know about that?—A. Nobody that I know of that is living; that is, no member of the firm. Mr. Fell is dead; Mr. John Fell is dead, and there is nobody that I know of.

Q. Do you remember when this advance from 60 to 65 per cent was granted to the independent operators for the sale of their coal?—A. I remember the event. I can not say I remember the date.

Q. What was the event that fixes it?—A. A new contract—a contract was made at that rate.

Q. Can you give us an event that happened about that time that will enable us to fix the date?—A. No; I can not.

Q. Was it not in the fall of 1900, after the strike?—A. I do not remember. I could easily tell by looking at the contracts, but I do not remember.

Q. Was the advance granted at that time general to what were called the independent operators, or was it confined to your concern?—A. So far as I know, it was general. I have never seen any other contract than ours, therefore I do not know.

Q. You were one of the committee, were you not, appointed by the independent association to negotiate in reference to a change from 60 to 65 per cent?—A. I was; yes, sir.

Q. Who was in that committee?—A. Mr. Truesdale, Mr. Baer—I am trying to remember other names.

Q. Mr. Connell?—A. No; Mr. Connell was not.

Q. Mr. Thomas?—A. Yes; Mr. Thomas was.

Q. Mr. Cumming?—A. Mr. Cumming, yes; and there was an individual operator I am trying to think of.

Q. Mr. Kemmerer?—A. Mr. Kemmerer; that is the man I am trying to think of.

Q. Mr. McAnulty?—A. Mr. McAnulty, yes; represented Mr. Connell, I think.

Q. Mr. Truesdale was the president of what road?—A. Of the Delaware, Lackawanna and Western, I believe.

Q. The Delaware, Lackawanna and Western Railroad?—A. Yes, sir.

Q. Mr. Baer was president of what railroad?—A. Of the Reading.

Q. And Mr. Thomas?—A. Lehigh Valley.

Q. What interest did Mr. Cumming represent and how?—A. I think he represented the Erie, but that I am not sure of.

Q. What was the purpose of these conferences?—A. To determine what would be fair rates to allow on different sizes of coal.

Q. Fair rates for whom to allow?—A. For the company buying the coal.

Q. In other words, you were, upon the part of the independents, consulting with these gentlemen as to what proportion of tide prices should be allowed to the sellers?—A. Yes, sir.

Q. Whom did these gentlemen you have spoken of represent—Mr. Truesdale, Mr. Baer, and Mr. Thomas?—A. I do not know whom they represented any better than anybody else. I suppose they represented their interests.

Q. They were presidents of systems that led into that region, were they not?—A. They were.

Q. What was the result of these conferences?—A. The ultimate result was the formation of the contract that now exists between several or a number—a good many of the individual operators, how many I do not know—and the railroad company.

Q. Were these individual operators representing the association for which you and Mr. Kemmerer spoke located in all three of the anthracite coal regions or were they confined to some one?—A. You mean the members of the association?

Q. Yes.—A. All of them, I think.

Q. The southern and the middle and northern regions all were represented?—A. I think all—I think the Schuylkill and the Lehigh Valley——

Q. And the Wyoming?—A. And the Wyoming, were all represented.

Q. You say the result of these conferences was that an agreement was made that 65 per cent instead of 60 per cent should be allowed to independent operators?—A. Yes, sir.

Q. Was that to apply in all the regions?—A. It was optional with individual operators whether they would accept that. Some accepted it and some did not, I believe.

Q. But if the individual operators wanted it, it was to be granted to all operators in all these sections?—A. So far as I know.

Q. Was a form of contract discussed and agreed upon at these conferences?—A. A form, so far as we agreed upon what was right with regard to different sizes, that ultimately formed the basis of the contract.

Q. Was the contract which A. Pardee & Co. entered into with The Lehigh Valley Coal Company in harmony with this general form of contract that was agreed upon?—A. Yes, it was, so far as I remember.

Q. And set out substantially the terms of that agreement?—A. So far as I remember.

Q. What was the claim put forward by the independent operators under which they maintained that they should have more than 60 per cent of the tide-water prices?—A. There was the belief on the part of the individual operator that he was not getting a fair proportion of the value of the coal, a fair compensation for the labor of mining it. The costs of mining are continually increased with the depth of the mines and the exhaustion of the larger veins, and everything of that kind, and it was thought that the carrying companies were receiving an unfair proportion of their freight rate.

Q. Why did not the independent operator, instead of asking for this increase from 60 to 65 per cent, send his own coal to market and sell it?—A. It is very easy to say that. If you could command the cars when you wanted them, you might do it; but if you can not, what are you going to do?

Q. Why could you not command the cars?—A. Because you could not get them if you did.

Q. Why could you not get them?—A. Because they would not have them, they did not have them. They would have their own reasons, which we would have no means of ascertaining the correctness of. You simply could not get cars, that is all.

Q. In other words, if you had undertaken to ship your own coal to New York and sell it, your requests for cars would not have been promptly met; that is your idea?—A. That is the idea exactly.

Q. How about the freight rate at that time over these railroads that led from the coal regions to tide water: was it high or low?—A. We always thought the rates were high.

Q. It was so high that it actually paid you better to take this 65 per cent than it did to take your own coal there and sell it?

Judge Moor. I object, on the ground that this question is leading and improper.

A. We believed that, in view of the fact that we could get cars better, that it would pay us better to make the contract than it would to run the chance of not getting cars, and having the cost of maintaining individual establishments for the sale of coal in the various markets.

Q. In other words, you were afraid to undertake to build up a trade in New York, because of the fact that you were not at all sure that you could get cars in which to send your coal?

Judge MOOT. That question is also objected to as leading and improper. A government counsel should not put such questions to his own witness.

Mr. WARREN. I wish to add to that objection, that inasmuch as it is apparently an effort to get from this witness an expression of the opinion of other individual operators, it is incompetent.

A. That was only one element in the question. The question was a broader one than that.

By Mr. MCREYNOLDS:

Q. What were the other elements?—A. The question was the cost and the storage of coal: before we had a large accumulation of coal at Perth Amboy, and there were large costs connected with the maintenance of the selling department in the various places; that, together with the uncertainty about the ability to get cars, and the certainty of settlement if we sold to one person instead of having to look up the credit of various customers—all those questions entered into the expediency of returning to the old method of selling coal, or the new.

Q. Were these conferences, between you as a member of this committee of the independents and Mr. Truesdale and others, about the time that the 65 per cent contract between Pardee & Co. and The Lehigh Valley Coal Company was entered into—I am trying to fix the date.—A. It was prior to that. The contracts followed; I do not remember how soon after.

Q. Can you give us any idea how soon after, whether it was one year or fifty?—A. Yes; I can give you that. It was not fifty and it was nearer one year.

Q. Had you any acquaintance with the facts relating to the projected New York, Wyoming and Western Railroad in 1898 and 1899?—A. I had nothing to do with it. I know that there was some talk among some of the operators about such a proposition, but I really know nothing about the detail of it.

Q. What was your information in reference to the purpose of that projected road?

Judge MOOT. I object to the question on the ground that the information of the witness, in view of what he has said, must be purely hearsay, incompetent, improper, irrelevant, and immaterial.

A. I only know what I have heard talked about.

Q. That is all we are asking for: just give us that.

(Objection renewed.)

A. I suppose it was an effort to bring about such competition as would enforce better rates with other roads. I do not know whether that was so or not. That was what the talk was.

Q. Was the road ever built?—A. That I do not know, sir. I never saw the place.

Q. Were you advised at that time why that projected railroad was not completed? Had you any information on that subject?

(Objection renewed.)

A. No; I had not.

Q. Were you acquainted with the operations of Simpson & Watkins?—A. No, sir; I knew the men personally, but I know nothing about their operations. I know they produced coal, but I know nothing more about them.

Q. Were they competitors of Pardee & Co. in that region for a long time?—A. No more than anybody producing coal were competitors of ours.

Q. They were competitors as producers and sellers of coal?—A. In no other sense.

Q. That is the only sense I am asking you about.—A. I never thought of them as competitors.

Q. How did you think of them—as confrères?—A. I thought of them as producing coal and interested in the same business as I was interested in. They were not very near us; they were up in the Wyoming region.

Q. They produced the same general character of coal that you did?—A. I only know it was anthracite coal; that is all I know about it.

Q. Did they sell their coal in the New York market while A. Pardee & Co. sold theirs there?—A. I do not know where they sold it.

Q. You were once an official of the Independent Anthracite Operators' Association; what do you mean by an independent anthracite operator?—A. It only designated a voluntary association of those operators producing coal.

Q. I asked you what you mean and what was meant during the life of this operators' association by an independent operator?—A. I never attached any particular significance to that detail. I do not know what it meant, except that they were individual operators who got together. Why they called themselves particularly independent, I really can not say.

Q. They were contradistingnished from some other operators, were they not?—A. I do not know of any other operators at all, except the railroads who were operating.

Q. Precisely. Then, independent operator meant a man who did not belong to the railroad?—A. Yes, sir; it meant that.

Q. Are you acquainted with the operations in the Lehigh region; the number of operators who are still independent there?—A. No; I do not know.

Q. What became of this Independent Operators' Association?—A. It died a natural death. There was no determination that it should end, it simply stopped, that is all.

Q. After you got these 65 per cent contracts through, it stopped?—A. Yes; it did not have a sudden stopping, it just did not reconvene, that is all.

Q. You mean after you got this arrangement for 65 per cent, the association did not reconvene?—A. Yes.

Q. That was the purpose of its life, was it?—A. The purpose of its life was to better the condition of the individual operators' business, and it did stop after that.

Q. Who was the president of that association?—A. Mr. Connell.

Q. What has become of Mr. Connell?—A. I do not know whether he is alive or dead. He used to live in Scranton. I used to meet him at the meetings occasionally. He did not often come.

Q. What is his first name?—A. I do not know. I never saw him until I met him at the association. He did not very often come. He was an old man and did not very often attend.

Mr. WARREN. William; I can tell you.

By Mr. MCREYNOLDS:

Q. Who was the secretary?—A. I do not know—oh, yes; a man named Fleming.

Q. What is his full name?—A. That I do not know.

Q. Where does he live?—A. He did live in New York. I do not know where he lives now.

Cross-examination by Judge MOORE:

Q. You were one of the witnesses called by Mr. Shearn for Mr. Hearst before the Interstate Commerce Commission some years ago in New York?—A. Yes, sir; I remember that.

Q. Have you been ill since that time?—A. No; I have not been ill. I had an accident a long while ago that injured my spine and I walk with difficulty; but I am about as well as any other man, barring that one thing.

Q. I was wondering whether that accident was before or since you were called as witness?—A. It was long before, but the development of the trouble has been exceedingly slow, and it advances slowly yet.

Q. Do you get up into the coal region very often?—A. Very infrequently indeed.

Q. How long since you were there?—A. I think I have been there within two years.

Q. You got there in the last few years about how frequently?—A. I do not go once in two years. I have no particular occasion to go.

Q. The mines or collieries of Pardee & Co., I assume, are superintended by some competent superintendent, making it unnecessary for you to go there?—A. Yes, sir; that is true.

Q. They now have, you say, two such collieries?—A. Yes, sir.

Q. On leased land?—A. Leased land.

Q. Your land is leased from whom?—A. Cranberry Improvement Company.

Q. Is that Cranberry Improvement Company a company identified, as far as you know, with any railway company in any way, or is it independent of any railway company as far as you know?—A. So far as I know, absolutely independent.

Q. I assume that your lease of their coal land for your collieries is upon some royalty basis?—A. Yes, sir.

Q. You say your lease has five years yet to run?—A. Yes, sir.

Q. Can you tell me about how old the lease is?—A. At the time this lease was made it was fifteen years, and we have used up ten of it.

Q. So that the present lease is 10 years old, substantially?—A. Yes, sir.

Q. I infer, then, that that lease is one that leaves your collieries free to go to market in any fashion, or to market their coal in any manner that they see fit?—A. Yes, sir.

Q. The only thing the company is interested in is its royalties?—A. That is all.

Q. You yourself have had active connection with Pardee & Co. in one capacity or another, either as partner or associated in the business or with the business, about how many years?—A. I can say about fifteen years.

Q. About fifteen years?—A. I should say about, sir. It began during John Fell's life, and grew more intimate as John Fell became ill and not able to attend to business, and ultimately I became a member of the firm.

Q. I infer that your connection with the business began some time prior to the negotiations that led to this 65 per cent contract; am I not right in that?—A. You are.

Q. About how many years prior to those negotiations would you place your connection with the business, your active connection with it?—A. I should say, I guess, three years possibly.

Q. Your association with the business of Pardee & Co., has it been a general one, or have you been more particularly in charge of some particular feature of the business?—A. No; I have looked after what might be called the Philadelphia end; but as we have a contract to sell all our coal to one party, you can easily see that the business is simpler than if we had to be looking up the credits of a great many purchasers.

Q. When you first became connected with the business in this active way, was the business already in a position where the coal was being sold under a single contract to a single purchaser, or do you not remember?—A. I had not anything to do actively in the business during the time the coal was being sold by our own company.

Q. It was already being sold under some contract to a single purchaser when you became actively connected with the business?—A. Yes, sir.

Q. Your knowledge, then, of the time when Pardee & Co. sold their own coal where they would and as they would through their own

organization, I infer, is what I might call a hearsay knowledge?—A. Yes, sir; it is.

Q. You married the daughter of Mr. Pardee?—A. No; the daughter of Mr. Fell—Gillingham Fell.

Q. He was the senior member of the firm?—A. No; A. Pardee, Mr. Pardee, was the senior member. Mr. Fell was the one who attended to the financial end in Philadelphia, and Mr. Pardee was in Hazleton and attended to the mining part.

Q. So until your active connection with the business began your knowledge came in this way, through the family, I assume?—A. Yes, sir.

Q. These two collieries you are now working, have you any way of telling about how many years Pardee & Co. have been operating those two collieries?—A. No; I really—they have been operated since the early fifties, but I do not know whether these two mines—I do not know how long they have been operated; but you know Pardee & Co. operated a number of other mines in Hazleton, belonging to the Lehigh Valley; in fact, I think that Mr. Fell and Mr. Pardee sold to the Lehigh Valley a number of those mines that they now possess there. That I do not know positively, but I think so. They were among the early operators in that region, but at what date they became the operators of these two mines, the Cranberry and Crystal Ridge, I can not say, for I do not know.

Q. Were they operating these two mines when you first became actively connected with the business?—A. Yes, sir.

Q. And had been for some time?—A. Had been for some time; yes, sir.

Q. They were already developed mines?—A. Yes, sir.

Q. With their own breakers, I assume?—A. Yes, sir.

Q. When you speak of their operating mines of the Lehigh Valley, I infer—and correct me if I am in error—that you mean by that that they leased land from the Lehigh Valley and developed collieries and operated them?—A. Yes. They paid the royalties to the Lehigh Valley for years on coal produced at the mines which now the Lehigh Valley operate themselves.

Q. Do you know whether Pardee & Co. ever owned the lands from which they took their coal, or do you not?—A. I really do not know that.

Q. Perhaps you can tell me another thing. Do you know whether they were ever—Pardee & Co. were ever connected with any railway coal interests of any kind in any way except in so far as they contracted to sell their coal to the Lehigh Valley?—A. I can not answer that. Mr. Fell's interests, probably you know, were very large and very general. Mr. Fell was at one time president of the Lehigh road himself and had large interests in the Lehigh Valley, and he had large interests as a coal operator. Just how they come together there is no use in my guessing about.

Q. About these 65 per cent contracts; if I understood you correctly, in answer to Mr. McReynolds you said that these negotiations that

led up to those contracts began in connection with the strike that President Roosevelt did not have any part in. Is that correct?—A. I do not quite gather that.

Q. I will put it another way. Do you remember that in 1900, some time before the election in 1900, eight years ago, there was a strike in the mines in the anthracite regions?—A. There was a strike, and I think that Mr. Morgan or some others advanced the rate, the miners' rate.

Q. At about the time of an election; is that what you mean?—A. Some months before the election.

Q. Do you remember that there was a strike?—A. I remember there was a strike, and there was an arbitrary—or determined by the powers that be in New York, whoever they may be—they did advance the rates that the miners received.

Q. How much, do you remember? Ten per cent, was it?—A. I think 10 or 12 per cent, but I do not remember.

Q. In other words, the so-called railway coal interests, without consultation with the independent coal interests, attempted to settle that strike by advancing the miners' wages 10 or 12 per cent, as nearly as you can tell?—A. Exactly, and thereby putting additional cost on the parties that had to pay miners.

Q. In other words, if they did that, then the individual operator who had miners to pay had to pay the same advance?—A. Exactly.

Q. And if he did not get any more for the coal and had to pay the same rate, it took just so much out of his pocket?—A. Exactly.

Q. So that as a result of that strike and this advance of wages in settlement of the strike the individual operators found themselves in a position where they had to meet this 10 or 12 per cent somehow?—A. Yes; that is right, exactly.

Q. Do you remember whether the independent operators tried to avoid that in any way; whether they sought to get along at first without meeting that advance themselves or making that advance?—A. You mean did they protest against it or did they evade it by not paying it?

Q. Either way.—A. It was felt to be a hardship, and it was talked about a great deal, but I do not know that anything was ever done, except that I think it resulted largely in bringing the individual operators to act together.

Q. Did they have any meetings at all to consider this matter, the individual operators?—A. Yes, sir; they had meetings.

Q. Do you know where they were?—A. Yes; they met in New York usually.

Q. Was it out of those meetings and the discussions at those meetings that this committee grew of which you were a member?—A. It was.

Q. Who were your associates, as nearly as you can recall, on that committee, representing the individual operators?—A. I have already named them.

Q. Mr. Connell and Mr. Kemmerer?—A. Mr. Kemmerer and Mr. Connell.

Q. Mr. Connell was the father-in-law of Mr. McAnulty?—A. Mr. Connell hardly gave it any attention at all. He was not well, and it was thought fair to put his son-in-law, who was not an operator but could inform Mr. Connell what happened. I suppose that was really the purpose of it. He was not a very active person on it, but he was supposed to be Mr. Connell's ears.

Q. Let me see if I get that clear at this point. Mr. Connell at that time was the president of this Independent Operators' Association, was he not?—A. He was, yes.

Q. And you were the vice-president?—A. I was vice-president; yes, sir.

Q. Mr. Kemmerer, what did he have to do with it, if anything?—A. He was simply a member, but he was an active operator. I think the firm was Whitney & Kemmerer. They were important operators.

Q. At that time the Independent Operators' Association was a vigorous body?—A. Yes, sir.

Q. Composed, you think, of 60 or 70 members?—A. I am only guessing. That is as I remember; I saw the room full at the meeting.

Q. That would simply be your recollection and estimate?—A. Yes, sir.

Q. They represented, you think, all the various regions?—A. So far as I know; yes, sir.

Q. And were, in fact, practically all the independent operators of any moment?—A. Yes; it was the larger class.

Q. What did you understand yourself was the particular thing that those independent operators wished your committee to bring about?—A. A larger return for coal mined.

Q. At that time was it a fact that a majority of those independent operators were selling their coal to coal companies connected with these railways, under the 60 per cent contracts, as you remember it?—A. I do not know how large a number were doing that. I suppose some of them; I do not know how many were. Some were.

Q. Some certainly were?—A. Yes, sir.

Q. Your company among them any way?—A. Yes, sir.

Q. You say they wanted you to bring about a better return to those operators?—A. Yes, sir.

Q. Did this advance have anything to do with the urgency of the matter?—A. It certainly did.

Q. How did you go about it to get into contact with men representing the coal companies connected with the railways?—A. I really do not remember how it came about that those gentlemen I have named were the ones. Of course we did not select them. I do not know how that was brought about. I simply know those were the men who all met at our several conferences.

Q. Those men, in the end, were the men that met your committee at the request of your committee I assume; is that right?—A. No; I do not remember that our committee ever requested them to meet them.

I think they were just as much interested; I think they recognized the fact that something had to be done, and it was done.

Q. Of course I assume that the railways did not have anything to do with getting up your meetings or getting up your committee?—A. No; not at all; but I suppose they saw there was a pretty earnest body of men, who represented large interests, and there was a certain fairness in their claim, and that it had to be recognized. That is only an assumption.

Q. I had assumed that after you had had your meeting and your committee had been appointed, in some way, by telegram, or letter, or telephone, or verbally, somehow you got into communication with somebody?—A. We did, but I honestly do not remember the detail of how we did come together primarily.

Q. Do you remember whether Mr. Baer at that time was president of any of the Reading roads, or whether Mr. Harris was president at that time?—A. I am not sure at that time whether he was the president or not. I am pretty sure he was the legal adviser, but I am not sure that he was the president.

Q. Do you remember what railway or what coal company Mr. Thomas was connected with at that time?—A. I do not remember about his connection with any coal companies. My recollection is—my belief is that he was president of the Lehigh Valley at that time. I may be wrong there, but I think he was. Now, I do not know—I think, perhaps, Mr. —— who was his predecessor?

Q. Mr. Thomas's predecessor in the Erie? Mr. Thomas was with the Erie for years. Mr. Walter was with the Lehigh.—A. Mr. Walter was with the Lehigh at that time, yes.

Q. Was not Mr. Thomas with the Erie at that time, on having your recollection refreshed?—A. I believe you are right there. I do not remember the date of the thing.

Q. I am trying to keep our record in some shape.—A. I think I was wrong in my assumption that Mr. Thomas was president of the Lehigh Valley at that time.

Q. Mr. Cumming, as you said——A. Mr. Cumming was with the Erie.

Q. Mr. Truesdale was, you say, with the Delaware, Lackawanna and Western, as you remember it?—A. Yes, sir.

Q. Do you recall any other men connected with any railways or any railway coal companies who had anything to do with this matter?—A. No; I do not.

Q. When you met these gentlemen—I suppose you had more than one meeting?—A. Several; quite a number.

Q. Those meetings, I assume, must have run over a period of time, because you were all busy men?—A. Yes; they did.

Q. Could you give us any idea of the period of time, whether it was a few weeks or a few months?—A. It was a few months.

Q. I assume that you did not have meetings with them from time to time for a few months unless there were subjects of earnest discus-

sion and difference between you?—A. There were differences, or we would not have had but one meeting.

Q. Can you tell us what the differences were, the main differences, and what the views on either side were?—A. I suppose it may be assumed that the operators wanted all that they could get and perhaps more than the other people thought we were entitled to. I do not remember the detail of it, but that would be the assumption, that that was the position of both sides.

Q. Let me help you a little, if I can. You, of course, asked that they cancel the old contracts which were then in existence on the 60 per cent basis, I assume?—A. Yes; exactly.

Q. And you asked that they be canceled for the purpose of putting in their place 65 per cent contracts, I assume?—A. Yes, sir.

Q. And you based that request, I assume, on the ground that this increased expense to which they had subjected you for labor in this way, without consulting you, made your request a fair one?—A. That brought it to a head.

Q. When you made those demands of them what counter argument or counter demand did they put up, so far as you can recall? Can you recall any of the demands they made?—A. No; I can not.

Q. Let me see if I can refresh your recollection. Do you remember anything being said at any time about the difficulties that had arisen in preparing coal for market under the old contracts—as to whether it was correctly prepared, or its standard was right, or the various sizes were right, or anything of that kind?—A. I can not say I remember any particular dispute about that. It was recognized by all of us that the coal had to be prepared, and arrangements had to be made for its inspection and for its passage as properly prepared.

Q. Can you remember whether these gentlemen made their stand mainly on getting the contracts changed from the old form so that if a new contract was negotiated on a 65 per cent basis, then there should be a more uniform standard of separation and inspection provided for the various sizes of coal?—A. There was an effort made to accomplish the standardizing of the coal.

Q. Did not those gentlemen mainly lay their stress on that at the time as against the 65 per cent on the other side?—A. I can not say that I remember that being made a special point of. They did not want to pay any more than they had to, and we believed that we were not being paid what we should be, and, of course, the detail of that arrangement necessitated our agreement as to preparation of the different sizes.

Q. Naturally, when it got to separation, they got as good a standard of separation as they could, if they were going to pay a better price?—A. Naturally.

Q. And that is according to your recollection?—A. Yes, sir.

Q. I assume you do remember, as a result of it all, that the 65 per cent contract, the form that you were discussing when you got through with it, did go into details about these sizes and this standard that were not in the 60 per cent contract?—A. Yes, sir; they

were more ample—I do not remember the form of the original, but I know that the contract now in existence is quite specific as to separation, and so forth.

Q. Has it worked well in that particular, or do you not know?—A. So far as I know, it has.

Q. When you had gone through with these conferences, the result, if I understand you correctly, was that on each side you gentlemen recommended this form of contract; that was the result of your conferences; is that correct?—A. We agreed to the terms that were ultimately reached.

Q. You say the individual operators were left free to sell or not sell, as they saw fit, under that form of contract?—A. Yes. Individual operators who thought it to their advantage to come in under the contract, so far as I know, could do so. Many did; I believe some did not.

Q. But they were left free to settle that question, each for himself?—A. Yes; each for himself.

Q. And the same thing was true of the railways or the railway coal companies?—A. So far as I know.

Q. In other words, nobody connected with the committees on either side assumed to bind anybody?—A. No, sir.

Q. To sign anything?—A. No, sir.

Q. Is that correct?—A. That is correct.

Q. But they did recommend that if contracts were entered into, they be entered into substantially in the form reached by that conference?—A. Yes, sir; we felt we had gotten the best terms we could from the railroads, and those who wanted to entered into that contract and those who did not stayed out.

Q. Subsequently, you say, and within a year, as nearly as you can recall, A. Pardee & Co. did enter into a contract in substantially that form?—A. Yes, sir.

Q. A bona fide contract?—A. Yes, sir.

Q. For the sale of your coal at your breakers' mouth?—A. Yes, sir.

Q. On the basis of railway weights where?—A. Up until the recent arrangement the coal was weighed at Packerton.

Q. That is in Pennsylvania?—A. At Mauch Chunk.

Q. Near your mine?—A. On the Lehigh road, in the direction of Philadelphia.

Q. But it is in Pennsylvania?—A. Yes. Now we have established our own scales up there, and under certain supervision of the Lehigh Valley the coal is weighed there. Whether it is reweighed at Packerton I can not tell you.

Q. That sale, under your bona fide contract, at your mines' mouth, is on the basis of the average New York prices?—A. What is called tide prices in New York.

Q. Whose figures do you settle on?—A. I do not remember how the detail is, but there is a method whereby the prices gotten are all put together and a money figure is reached. I do not know the detail of that.

Mr. McReynolds. I am going to ask the witness to produce the contract.

By Judge Moot:

Q. Pardee & Co. have made an answer in this case through their attorney, or the people interested in Pardee & Co. have. They have been served and they have made an answer in this case, have they not?—A. I can not tell. I have not done anything about it. Upon getting the original notice I communicated with Mr. John G. Johnson, and Mr. John G. Johnson, I believe, has made answer for us.

Q. How has this contract worked in the case of your own collieries and your own company, generally and broadly speaking? Has it been the subject of many disputes, or anything of that kind, or has it, on the whole, worked well?—A. I think it has worked about as fairly as you could expect that kind of a contract to work. If I could get all the cars I want when I wanted them, I would rather sell our own coal a great deal.

Q. When you come to getting all the cars you want when you want them, do you know whether your collieries in that respect have been any exception to the other business interests of the country, when there has been a congestion like there was, say, two years ago?—A. I do not know.

Q. Has there been difficulties, for instance, in getting cars to your collieries at all times, or has it been only at exceptional times when these difficulties about getting cars have occurred?—A. We have not had difficulties lately, because the company is not obligated to take every pound of coal that we can get out. We get out what they want to take and they supply us cars accordingly. They may say there will be a restriction, and they restrict us.

Q. What you mean is that there is a provision in the contract for getting things out monthly on some kind of a fair basis?—A. The Lehigh Valley have a right to distribute the coal that they are going to handle among those who are under contract with them—I can not control that—and they supply us cars accordingly. I mean to say that, as an individual operator, if I were on two railroads, instead of one, if the Pennsylvania Railroad reached our colliery and I could get cars as I wanted them, I would a great deal rather sell our own coal and do a great deal better business than we do now.

Q. About how many miles of railway lines are there reaching into your collieries before you get to the main line?—A. Of the Lehigh Valley?

Q. Yes.—A. I can not tell you how many miles it is from there to Mauch Chunk. I suppose that would be the main line of the Lehigh Valley?

Q. Yes.—A. I do not know how many miles.

Q. I do not care to have it accurately, but just your best judgment and estimate.—A. I have been over it a good many times. I suppose 30, probably, as I said before. I do not know whether that is true or not.

Q. Do you know whether there are any other collieries on that 30 miles except your own?—A. There are several.

Q. Are yours well at the end, or are they along in the middle of that 30 miles?—A. There are some that are nearer and others that are farther off.

Q. Is there any other business, substantially, for that 30 miles except this coal business?—A. I suppose there is. There is the city of Hazleton. They must have their business besides. I do not know what the other business is.

Q. Do you know how large a place Hazleton is?—A. I do not.

Q. It is a mining town?—A. It is quite a large town. Of course, I suppose Hazleton exists as a town because of the coal that is in the neighborhood, but it has grown to a considerable community.

Q. Five or ten thousand people?—A. Oh, a great many more; I do not know how many. You can guess as well as I can.

Q. Did you mean to have the record carry the inference that you thought the Lehigh unjustly discriminated against you by not giving you cars, or in any way?—A. No, sir; I do not know that they do. I have no reason to think that they do not treat us as fairly as they treat others. All I mean to say is, the Pennsylvania Railroad is near us, and if the Pennsylvania Railroad reached our colliery as well as the Lehigh Valley we could have a great deal larger output, because we could have an outlet on their road as well; but it does not.

Q. About how near is the Pennsylvania to your collieries?—A. Very near, indeed. I can not tell you how many feet, but very near.

Q. A mile or so?—A. Yes; within that.

Q. It has been for about how many years?—A. I do not know, and I do not know that I am strictly right when I say within a mile, but I know it is right in the neighborhood. I come from Hazleton by the Pennsylvania and the Lehigh Valley, and I do not remember the exact relation of their depot or their line to the colliery, but it is not remote.

Q. Has it ever been suggested by anybody to the Pennsylvania Railroad or to your company that a spur should be built, either by your company or the Pennsylvania, to your collieries?—A. I wanted it very much.

Q. Did you take it up with the Pennsylvania?—A. Not officially, but I knew it could not be done, because the Lehigh Valley would not have favored it, naturally.

Q. You mean that if the Lehigh would not have favored it, the Pennsylvania would not have done it; is that your idea?—A. That is my idea; I do not know as it is right.

Q. Do you know anything about what it would have cost to have built that spur?—A. I do not.

Q. You never tried to see?—A. I regarded it as an impossible thing to accomplish and therefore I did not undertake it.

Q. You never got an estimate from a surveyor or an engineer to see what it would cost to do it?—A. Never.

Q. The Lehigh Valley Coal Company have collieries up in that general section, have they not?—A. They have.

Q. As between the collieries of The Lehigh Valley Coal Company and the collieries of Pardee & Co., did you mean to suggest on the record that they supplied their collieries with cars out of proportion with the supply they furnished your collieries?—A. I have no reason to think so.

Q. As far as you know, the distribution of cars, then, as between The Lehigh Valley Coal Company, their producers, and yourselves, by the Lehigh Valley Railroad Company, has been a fair distribution?—A. As far as I know. Of course my remoteness from the place would not acquaint me with the details that would enable me to answer that question, but I have never heard it claimed that they were unfair to us in the matter of car distribution as compared with their own operations.

By Mr. SCHAFFROTTER:

Q. That distance or remoteness would not prevent you from learning very quickly from the mines if you were being discriminated against?—A. Yes; I am not indicating at all that we have been unfairly treated. As far as I know, we have been fairly treated.

By Judge MOOT:

Q. You spoke of the Independent Association having died a natural death. Do you know whether that association had counsel to represent it before the coal strike commission or not?—A. I do not remember that.

Q. Do you know whether they were a party to the conciliation board—had a membership in this conciliation board under the award of the strike commission?—A. You mean the board appointed by Mr. Roosevelt?

Q. The board appointed under the award of the strike commission called a conciliation board.—A. You mean a board of which Judge Gray was the chairman?

Q. No; that was the strike commission of which he was chairman. There was a conciliation board provided for by their report.

Judge CAMPBELL. To settle disputes with the mine owners.

A. You mean the board that was appointed by Judge Gray?

Judge MOOT. That is it.

A. I do not know anything about that.

Q. Do you know whether Mr. Connell, the nephew of the president of the association, is a member of the board of conciliation appointed at the instance of the strike commission, so called, so as to represent the independent operators?—A. I do not know how he was appointed, and I do not know that it had anything to do with the individual operators.

Q. In 1906 the miners made another little strike, we have been told on this record, for a few weeks, or suspension; that was finally adjusted by conferences on the basis of going ahead until April, 1909, on the basis of the strike commission award. Do you know whether the

Independent Operators' Association was represented in those conferences that made that adjustment or not?—A. Not so far as I know. I heard nothing about it.

Q. Do you know how your own collieries were represented in that conference of 1906, or whether they were represented?—A. They were not, so far as I know.

Q. They were not represented, so far as you know?—A. So far as I know, no.

By Judge CAMPBELL:

Q. I just want to see whether by refreshing your recollection I can straighten out the record of your testimony. You stated that the first coal-purchase contract, so called, was made by your firm about 1892 with the Reading. That was the substance of your answer, was it not?—A. I believe so.

Q. That was at a time when The Philadelphia and Reading Railroad Company had leased the Lehigh Valley Railroad Company?—A. And the Jersey Central. I stated that.

Q. My recollection is that your contract was made, nevertheless, by and with The Lehigh Valley Coal Company. Would you be surprised to find out that that is the fact?—A. I think probably that is true. It was coincident with the absorption of that road, and I regarded the Reading as the parent of the whole thing—the extension of these leases of the other coal companies.

Redirect examination by Mr. MCREYNOLDS:

Q. All those companies looked alike to you at that time?—A. It came about probably as a result of that move, the absorption of those other two roads.

Q. You could not tell exactly?—A. I could tell exactly, but I could not remember it all those years.

Q. Tell us the names of the collieries, please, that are now being operated by Pardee & Co.—A. Crystal Ridge and Cranberry.

Q. I am going to show you a map of the anthracite coal regions, and ask you to show us on that map just where those collieries are, describing them so that one not familiar with the region can locate them by looking at the map. If you can describe them as the collieries that appear on that map marked so-and-so, and then describe them with reference to Hazleton, I think it will fix it.

(Map shown to witness.)

A. I see a map before me, and I see two figures on it in the neighborhood of Hazleton that the margin tells me stand in the position of the East Crystal Ridge and the Cranberry collieries. Those are the ones that A. Pardee & Co. are operating.

Q. What are the numbers on the map?—A. Two hundred and seven and 208; 207 the Cranberry colliery, and 208 the East Crystal.

Q. What direction are they from Hazleton, and about how far as indicated by that map?—A. If this is north, they are east from the town as indicated.

Q. The top of the map is north, of course.—A. If the top is north—no, then they are west.

Q. So these two collieries are west of Hazleton, and about how far?—A. I do not know what the scale of that is.

Q. Do you know from your knowledge of the country?—A. I should say from the compact part of Hazleton, about half a mile. That is a mere guess; I do not know. I have not seen the place for two years.

Q. It has not moved in two years, probably.—A. No; it has never moved, but I have not measured the distance. I can not give you an exact answer.

Q. You stated a while ago, in answer to questions, that the committee representing the independent operators made certain representations, and that the gentlemen who represented the other interests made certain representations. Was it a part of the requests of the gentlemen representing what are commonly called the railroad interests that these 65 per cent contracts, when made, should cover the life of the collieries in reference to which they might be made?—A. So far as I remember, the effort was to have the contracts cover the life of the collieries.

Q. The effort of whom? Whose effort was it?—A. Naturally, those representing the railroads.

Q. The old 60 per cent contracts which existed prior to the time of these negotiations you have been telling us about, were they for the life of the collieries?—A. I do not recollect. I do not think they were.

Q. Was the 60 per cent contract made by Pardee & Co. for the life of its collieries, or was it for a definite time?—A. As I recollect, for a definite time.

Q. Do you remember when it expired?—A. I do not.

Q. Is it not your understanding that all, or substantially all, of those old 60 per cent contracts were for a definite time.

Judge Moon. If the Government has to prove anything on that subject it certainly can not prove it by the mere understanding of a witness who never saw any of the contracts.

Mr. Warren. I object for my clients to this question because it is incompetent, and because the witness has not shown any knowledge of the 60 per cent contracts other than that of the firm with which he was associated, or that he has ever even seen one.

A. I do not know anything about any contracts except our own.

By Mr. McReynolds:

Q. Were you not present when these negotiations were going on with reference to the independent contracts?—A. You are now talking about the original contracts?

Q. I am talking about the contracts that were in existence just prior to the making of these 65 per cent contracts.—A. I have no knowledge of any other contract than our own. That had nothing to do with the individual operators then.

Q. You have just——

A. I beg your pardon, you and I do not understand each other.

Q. You have just said that in these negotiations the parties representing the railroad companies insisted that the new contracts under the 65 per cent basis should be for the life of the collieries. Was that a change from the condition which existed prior to that time?

Mr. WARREN. We object to this question. I do not recall the witness having said that the companies insisted upon these contracts being for the life of the collieries, and therefore I object, because I think counsel has unintentionally misrepresented the witness's answer. Also, that it is incompetent. He is asking for a conclusion without any knowledge on the part of the witness.

A. I recollect that the last contract—that is, the contract we are now operating under—was for the life of the mines. I do not recollect any particular point being made of that or of any contradistinction made that that was different from the other contracts. I do not remember what the terms of the other contracts were, and I do not remember any point being made of the fact that it was a radical departure from the old contract. I remember the fact that it was for the life of the mines. That is a full, honest answer to that question.

Q. You do not recall that in these meetings of independents there was frequent discussion of the fact that these 60 per cent contracts were expiring from time to time and that all this tonnage represented by them would be free to go where it chose.

Mr. WARREN. I object to that, because discussions between gentlemen are not competent evidence of facts, and therefore the evidence is not competent.

A. I do not recollect that there was any such point made as you talk about. I recollect the fact that they were to be for the life of the mine, but I do not recollect that there was such a tremendous point made of the fact that in that respect they were different from the other contracts.

Q. What connection have Pardee & Co. with the Lehigh Valley Railroad Company or The Lehigh Valley Coal Company at this time?—A. They are under this contract to sell their coal to them.

Q. Any other connection?—A. I do not know of any other relation.

Q. You do not sell any coal for them?—A. No, sir; we sell coal to them.

Q. In these negotiations, about which you have been asked, between the railroad interests and the independents, were the railroads asked to reduce their freight rates?—A. I do not recollect that they were. Our whole contention was that we did not have a just proportion, which would involve the reduction of the rates of freight, of course; but there was no particular argument about their rates that our committee had with them. Our committee represented that we were not adequately paid for what we produced, and as the thing had been done on a 60 per cent basis, the natural way was to increase that.

Q. You said a while ago, if I understood you, that these collieries now being operated by Pardee & Co. could produce much more coal than they are producing.?—A. I said we could produce about 2,000 tons a day.

Q. But, in answer to Judge Moot awhile ago, I understood you to say that those collieries could produce much more coal than you have in recent years been producing?—A. If we operated every day we would produce more coal than we do; but we do not operate every day.

Q. Why do you not operate every day?—A. I suppose because the Lehigh Valley does not want the coal. I do not know any other reason.

Q. Your operations then are determined, of course, under your contract, by the amount of coal that The Lehigh Valley Coal Company tells you it will take from you?—A. Yes, sir.

Q. During the last three years has that amount of coal which The Lehigh Valley Coal Company told you it would take from you been as much as you could have produced?—A. No, sir.

Q. Can you give me the approximate difference between what you could reasonably have produced and what was taken from you?—A. No; I can not.

Q. At what time during the month does the Lehigh Coal Company notify you as to the amount of coal which they will take from you during the succeeding month?—A. So far as I know, we have no formal notification for the month.

Q. How do you get the information, then?—A. Up there at Hazleton we are informed that there may be a restriction for two days in a week or three days, something of that kind, and that may come from various causes. We have had of late severe restrictions on account of lack of water.

Q. But what I wanted you to tell me was how you are notified by The Lehigh Valley Coal Company.—A. That does not come to our office; therefore I do not know anything about it. Up at the mines they get so many cars. In just what form they give them that information I can not tell you.

Q. Will you be good enough to give us a copy of the contract under which you are now operating and under which you are selling the output of the collieries of Pardee & Co. to The Lehigh Valley Coal Company?—A. I can give you a copy; yes, sir.

Q. Will you be good enough to let us have it to-morrow?—A. I do not know whether I can let you have it to-morrow.

Mr. McReynolds. Be good enough to let us have it before we leave, and I will ask to have it indorsed as Government Exhibit No. 143.

(A copy of the 65 per cent contract between A. Pardee & Co. and The Lehigh Valley Coal Company, referred to by the witness, was subsequently produced and introduced in evidence as Government Exhibit No. 143. A supplement to said contract was also produced and introduced in evidence as Government Exhibit No. 144.)

Recross examination by Judge MOOT:

Q. As I understand it, the best of your information is that for the last few years you have been producing about 500,000 tons a year; is that correct?—A. That is as I recollect it, sir; about.

Q. Going back as far as the coal strike of 1902, would you say you have been producing about 500,000 tons a year back as far as that?—A. I really can not tell. I could exactly if I were at the office, but I do not remember. It is somewhere in that neighborhood, between four and five hundred thousand tons.

Q. In operating your collieries, do you expect breakdowns to prevent operations a certain length of time every year on the average?—A. Yes, sir.

Q. About how many days or weeks a year do you expect breakdowns to interfere with your operations?—A. I can not answer that, because I am not at the mine enough to answer it; but I know perfectly well that from one cause or another there will be a breakdown. Some defect will occur in a breaker, or something will happen that will prevent the output—lack of steam or something else.

Q. You spoke of lack of water recently. Do you need water to operate your breakers?—A. We had not water enough for the boilers to keep up pumping and to run the concern.

Q. Do you know to what extent that interfered with your operations recently?—A. Yes; I know that a letter the other day from Hazleton, I think, said that we had lost 7,000 tons in a week or ten days.

Q. For want of water?—A. For want of water.

Q. Aside from breakages and want of water if you get a dry spell, take that suspension in 1906 of four or five weeks; did that affect you?—A. Yes, sir. It was very expensive, indeed, because you have to pump the mine at any rate.

Q. And you can not produce?—A. You can not produce and you have all the costs of maintenance, of pumping, etc.

Q. How are the miners as to operating your mines during the holidays—Christmas, and so on?—A. They have an endless number of holidays, every saint you ever heard of—Mitchell day and every other saint.

Q. And circus days?—A. All kinds.

Q. Can you get the miners to work on any of those days?—A. No, sir; not to save your life.

Q. So you can not produce any during any of those days?—A. No, sir.

Q. How is it as to Sundays? Do you run Sundays or do you not?—A. No, sir, we do not.

Q. How is it as to days after pay day, as to whether you are able to produce full amounts or not?—A. I do not come sufficiently in contact with the work to answer that question intelligently, but I know very well that all hands are not on hand after pay day. It is more or less of an embarrassment; how far I can not state.

Q. Do you know whether they have a semimonthly pay day under your legislation now or not?—A. No, I do not know about that.

Q. You do know then in a broad and general way that, taking your capacity of 2,000 tons per day, you can not produce it on saint's days, you can not produce it on holidays, you can not produce it when you have breakages, you can not produce it on——

A. Saint's days.

Q. And circus days and days of that description?—A. I do not know how circus days work, I know about the saints.

Q. Just how much does that figure up to in a year? You really can not tell the amount?—A. No, I can not.

JOHN W. SKEELE, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. What is your business address?—A. 143 Liberty street, New York City.

Q. What is your occupation?—A. General sales agent of The Lehigh Valley Coal Company.

Q. Over what territory do your duties extend?—A. Wherever The Lehigh Valley Coal Company sells its coals.

Q. Give us in a general way where that is.—A. That is New England, New Jersey and Pennsylvania, and New York and Canada, and Western States.

Q. How much coal does The Lehigh Valley Coal Company sell annually?—A. It mined last year and purchased about nine millions and a half tons.

Q. How much of that was mined by it and how much purchased?—A. I will have to estimate that. I can give it to you about right. We purchased about 40 per cent.

Q. Are your purchased coals and your mined coals kept separate?—A. You mean stocked separate?

Q. Yes.—A. No, sir.

Q. Are the sales of your purchased coals and your mined coals kept separately on the books?—A. No, sir; not in my office.

Q. You are unable, then, to tell where your purchased coal goes and where your mined coal goes?—A. I couldn't tell. When we stock it we put it all together. We fill orders for any one territory from any of those mines; distribute our orders.

Q. Where are the coals of The Lehigh Valley Coal Company mined?—A. In the Wyoming region, in the Lehigh region, and in the Schuylkill region.

Q. Does The Lehigh Valley Railroad Company reach all three of these regions?—A. Yes, sir.

Q. Are all the collieries operated by The Lehigh Valley Coal Company on the lines of the Lehigh Valley Railroad Company?—A. All

that The Lehigh Valley Coal Company operate themselves, I think, are.

Q. Are all the collieries, the output of which is purchased by The Lehigh Valley Coal Company, on the lines of the Lehigh Valley Railroad?—A. No, sir.

Q. Which ones are not?—A. Coal which we buy from Coxe Brothers & Co. (Incorporated) is on the line of the Delaware, Susquehanna and Schuylkill Railroad.

Q. The Delaware, Susquehanna and Schuylkill Railroad Company is now operated by the Lehigh Valley Railroad, is it not?—A. I am so informed.

Q. Are any other of the coals which are purchased by The Lehigh Valley Coal Company produced by collieries served by the lines of any other railroad system than the Lehigh Valley Railroad?—A. I think not.

Q. Does The Lehigh Valley Coal Company purchase coal in each of the three anthracite coal regions of Pennsylvania?—A. They do not purchase any in the Schuylkill. They do in the Wyoming and what you call the middle district.

Q. So far as you are aware, does the Lehigh Valley Railroad carry coals for any coal company owned by a railroad company?—A. You mean excepting The Lehigh Valley Coal Company?

Q. Yes.—A. I do not think they do.

Q. Does The Lehigh Valley Coal Company sell coal on account of anybody except itself?—A. Yes, sir.

Q. What other companies and what operators does it sell coal for?—A. The G. B. Markle Company, now a corporation; until within a year G. B. Markle & Co.

Q. What is the output of the G. B. Markle Company?—A. I couldn't tell you.

Q. Can you give us an idea? You market it, don't you?—A. Yes; we do. My estimate may not be very close to the mark, but I should think a million and a half tons.

Q. Where are the coals of the G. B. Markle Company mined?—A. In the Hazelton region.

Q. Is that in the middle region?—A. Yes; that is the middle region.

Q. Near what town?—A. Hazelton, or Jeddo.

Q. Where are those coals sold?—A. Most of that coal is sold east of the mines. It comes this way.

Q. Is much of that coal sold in the New York market?—A. Yes, sir.

Q. Is it sold separately from the coals of The Lehigh Valley Coal Company?—A. Yes, sir.

Q. It is kept separate from the time it leaves the breaker until it is delivered to the customer?—A. Yes, sir.

Q. What does The Lehigh Valley Coal Company get for marketing that coal?—A. Twelve or twelve and a half cents per ton.

Q. On all sizes?—A. I am not sure. We do on prepared sizes. I am not sure as to the others.

Q. Tell us in a practical way how that coal is handled. Where is it delivered by the Markle Company to The Lehigh Valley Coal Company?—A. We take orders for the coal, send them to Markle, and he makes requisition for cars and loads that coal, and it is shipped direct to his customers in direct shipments. When the demand does not absorb it all some of it is stocked at Perth Amboy. That is the only stocking place for that coal.

Q. Who controls the price at which that coal is sold?—A. G. B. Markle Company.

Q. Do they instruct you at what price to sell it?—A. Yes, sir.

Q. Are those prices the same as the prices of The Lehigh Valley Coal Company?—A. Generally: no.

Q. How much difference is there?—A. We get from 10 to 30 cents per ton more.

Q. For the Markle Company coal?—A. Yes, sir.

Q. Does The Lehigh Valley Coal Company get anything out of that coal except its 12½ cents?—A. No, sir.

Q. That is all of every sort of payment that it gets?—A. That I know anything about.

Q. What does the Lehigh Valley Railroad get out of that?—A. They get their freight, I suppose. I do not know anything about the Lehigh Valley Railroad Company on that.

Q. Do you know what the arrangement is between Markle & Co. and the railroad about the freight on that?—A. No, sir.

Q. Who pays that freight?—A. I think that freight is paid by The Lehigh Valley Coal Company, but it is handled in the accounting department. I don't handle it.

Q. You think that freight is paid by The Lehigh Valley Coal Company?—A. Yes, sir.

Q. Do you know how settlements are made between The Lehigh Valley Coal Company and Markle Company?—A. The Lehigh Valley Coal Company deducts the freight and the commission and pays him the balance monthly.

Q. What else does Markle & Co. get out of this coal?—A. Nothing that I know of. I am a little in doubt about that freight—whether we deduct that or not—but I think we do. I think that is done in our accounting department, and send him the balance. I think we pay it.

Q. How about the weights? Do you know anything about the weights upon which settlement is made?—A. I do not know whether that coal is weighed at the mines or at Packerton. I do not know where that coal is weighed, whether at the mines or the railroad scales.

Q. There might be a secret arrangement about the shipping of this coal with reference to which you would not be advised?—A. I do not think so.

Q. There might be, I say.—A. It is not probable.

Q. Did you make the contract with Markle & Co.?—A. No, sir.

Q. Who did?—A. I don't know. It was made before my time.

Q. Then your knowledge of the contract is only what has been told you?—A. I have seen it a long time ago.

Q. What is it? Written?—A. Yes, sir.

Q. Where is it?—A. That I don't know.

Q. How long has this arrangement existed between G. B. Markle & Co. and the G. B. Markle Company and The Lehigh Valley Coal Company?—A. I couldn't tell you.

Q. Give us an idea. You said a long time awhile ago.—A. It has been in existence for six or seven years.

Mr. SCHAPERKOTTER. It has been since 1889.

By Mr. MCREYNOLDS:

Q. How much coal does The Lehigh Valley Coal Company sell f. o. b. New York Harbor?—A. I couldn't separate those figures. I can tell you how much the New York office sells.

Q. How much?—A. A little over four millions of tons.

Q. And in what territory does the New York office sell?—A. New Jersey, and part of New York State, including New York City, and New England.

Q. Does The Lehigh Valley Coal Company issue circulars from time to time to the trade, showing at what price its coal will be sold?—A. Where?

Q. Anywhere.—A. Yes, sir.

Q. Where?—A. Buffalo, Chicago—most all of the sales agencies excepting New York City. We do not issue any there.

Q. How long have the selling prices of coal on prepared sizes by The Lehigh Valley Coal Company, f. o. b. New York Harbor, been the same that they are to-day?—A. Since September 1.

Q. September 1, the prices became $5 per ton?—A. Yes; at the harbor.

Q. That is, f. o. b. New York Harbor?—A. Yes, sir.

Q. What point on the harbor?—A. That is what we call "up river." The lower ports it is 5 cents less.

Q. What do you mean by "up river?"—A. Hoboken, Jersey City.

Q. That is, if it is delivered f. o. b. at Hoboken or Jersey City, it is $5?—A. Yes, sir.

Q. And if it is delivered also upon the harbor at Perth Amboy, it is 5 cents less?—A. Yes, sir.

Q. Why the difference?—A. There is a difference in the water freights. That coal has to be handled by water at 5 cents a ton—about 5 cents a ton.

Q. What was the price of your prepared sizes f. o. b. New York Harbor, Hoboken, and Jersey City, on the 1st day of April last?—A. $4.50 in New York Harbor, with the same difference for Perth Amboy.

Q. Then, it increased 10 cents per month each month thereafter until it became $5?—A. Yes, sir; the first of September.

Q. How long have those prices—the April prices being $4.50 and the September prices $5—been in existence?—A. I think since 1902.

Q. What have been the prices of The Philadelphia and Reading Coal and Iron Company during that same period?—A. I couldn't tell you.

Q. Haven't substantially all of what are known as the railroad coal companies, who sell coal f. o. b. at New York, observed or published the same prices that have been observed or published by The Lehigh Valley Coal Company since 1902?—A. I couldn't tell you that.

Q. Don't you know what your competitors are doing?—A. I try to, but I do not always.

Q. Don't they advertise to the public the self-same prices that you do, and haven't they done that since 1902, in New York Harbor?—A. I can't say that.

Q. What is your observation about it? It has been your business to know, has it not?—A. I told you I try to find out what their prices are.

Q. As a result of your observation?—A. Sometimes I find they are the same as ours and sometimes I find they are not.

Q. You mean by that that they are giving some slight discount from their published rate?—A. That is the common report.

Q. Haven't their published rates been the same since 1902 as yours?—A. I do not know that they publish a circular which would make a rate. I think the understood rate—I don't know. I do not know that they publish a circular.

Q. Has not the New York rate of all these railroad coal companies f. o. b. New York been the same on the prepared sizes since 1902?—A. I do not know that it has.

Q. In making settlement with Markle Company is anything deducted for waste?—A. I think so. On coal which goes over the dock.

Q. How much?—A. The actual wastage.

Q. How much does that amount to?—A. I would have to estimate it for you, 2 per cent.

Q. Does that 2 per cent represent approximately what the actual waste is?—A. I think the actual waste is deducted.

Q. And that amounts to approximately 2 per cent?—A. I should say so.

Q. You said your company issued no circulars at New York?—A. No, sir.

Q. What is the difference between your New York prices and your Buffalo prices?—A. The New York price to-day is $5. The Buffalo is $5.50.

Q. Is not the difference always 50 cents?—A. About; yes, sir. "Always" is a term there that I do not know. It generally is.

Q. What is the difference between your New York prices and your Chicago prices?—A. The New York Harbor price to-day is $5 gross ton. The Chicago price is $6.50 net ton.

Q. Net ton means 2,000 pounds?—A. Yes, sir.

Q. And gross ton 2,240 pounds?—A. Yes, sir.

Q. How does the trade in New York find out what your prices are to be?—A. We write them, and our traveling men call upon them.

Q. How long in advance do you quote these prices?—A. Advance of what?

Q. The time you quote them.—A. How long in advance do we quote this price at the time we quote them?

Q. If you were quoting prices to-day, how long in advance of to-day would you quote them?—A. You mean how long would the prices be good that I quoted to-day?

Q. Yes.—A. They are subject to change without notice.

Q. But for how long a time does the quotation cover?—A. The quotation would read for coal shipped during this month, but we would reserve the right to change those prices.

Q. But you have not changed prices since 1902?—A. In 1906, I think, there was a slight difference.

Q. You raised the prices?—A. No; I think we did not reduce the price in April in 1906.

Q. You did not issue your ordinary reduction that year until May? That is the difference?—A. I think that is it. That is my impression.

Q. Have you ever issued circulars for the New York market?—A. I think not.

Q. How long have you been in charge of the New York office?—A. Since the spring of 1900.

Q. Who connected with The Lehigh Valley Coal Company is authorized to make prices on coal?—A. I can tell you who I get my instructions from. From the president or vice-president.

Q. You have no power to make the prices?—A. No, sir.

Q. From whom do you actually get those instructions—from the vice-president or the president?—A. Sometimes from one and sometimes the other. Generally the first vice-president.

Q. What is his name?—A. William H. Sayre.

Q. Do you know who fixed those prices in 1902 which have been adhered to ever since?—A. No, sir.

Q. Are you on salary or do you get a commission?—A. Salary.

Q. Has any estimate ever been made up, that you are aware of, of the cost of selling coal in New York Harbor by The Lehigh Valley Coal Company?—A. There is on the cost of selling coal by the New York office.

Q. How much is it?—A. I think it would average about 4 cents.

Q. What do you mean to include in that 4 cents?—A. That is just the selling.

Q. What is the wastage?—A. I estimated that at 2 per cent a while ago.

Q. Do you mean to say that the total cost of selling coal, through the New York office, including bad debts and all that, is 4 cents?—A. Oh, no; not including bad debts.

Q. What is that, including bad debts?—A. I couldn't tell you.

Q. If you collected everything and had no bad debts, then it would be about 4 cents?—A. I have estimated the cost of selling at about 4 cents. It runs along about there.

Q. That does not include the expenses coming from bad debts?—A. That is actual cost of selling our coal, without anything deducted. That includes all of our coal. If you confine it to prepared sizes, the tonnage would be less, and the cost of selling more, accordingly.

Q. What would be the cost of selling the prepared sizes?—A. I couldn't tell you. I made an estimate there—I think you have it before you—at one time, but I think that was high.

Q. You said in the Hearst case the cost of selling coal was 10 cents a ton?—A. No. I estimated it. I estimated on prepared coal.

Q. You said prepared coal was 10 cents a ton?—A. Yes. This price that I have given you takes in all our coal, steam sizes and all. That was the estimate I made at that time.

Q. At what points on New York Harbor are coals carried by the Lehigh Valley Railroad landed?—A. Perth Amboy.

Q. How does the coal that you get at Hoboken and Jersey City come from the mines?—A. In answering your first question, you said "landed on New York Harbor." I understood you to mean f. o. b. coal landed in boats on the harbor. At Jersey City we do not deliver any coal to vessels.

Q. That is, for consumption in Jersey City, is it?—A. Yes; and some across on the ferry by teams.

Q. Where are your offices in New York?—A. 143 Liberty street.

Q. Where are the offices of The Philadelphia and Reading Coal and Iron Company?—A. The New York offices are 143 Liberty street.

Q. Close to yours?—A. They are several floors from us.

Q. In the same building?—A. Same building.

Q. Who is their general agent located there?—A. Their New York agent?

Q. Yes.—A. Frank Oberander.

Q. Do you sell coal in Brooklyn?—A. Yes, sir.

Q. The same prices as in New York?—A. Yes, sir.

Q. To whom do you sell coal in New York; dealers or users?—A. We sell to the dealers, exclusively. We might sell to factories or manufacturers.

Q. What is the water freight from Perth Amboy to alongside New York?—A. Seventeen to 20 cents, I think.

Q. It is about 5 cents less from Hoboken and Jersey City and Weehawken and Edgewater, is it not?—A. Generally it is that difference.

Q. There is some slight variation in the water freight in New York Harbor?—A. Sometimes when the boats are very plentiful you can get a boat for 17 cents, or at other times you would pay 20.

Cross-examination by Judge CAMPBELL:

Q. The gentleman has been very curious about the coincidence of having several coal offices in 143 Liberty street. How long have you known that building?—A. Ever since I have been in New York.

Q. It is an office building, is it not?—A. Yes, sir.

Q. And occupied by numbers of coal offices besides those of these companies that are referred to?—A. Yes, sir.

Q. The general offices of the Lehigh Valley Railroad Company are also located there?—A. One of them.

Q. Occupying nearly a whole floor of that building or perhaps more?—A. More.

Q. The committees of the trunk lines and other forces, and so forth, are located there also?—A. I understand so.

Q. Also barber shops and other facilities are located in that building?—A. Yes, sir.

Q. In other words, it is a building that is held out for rent, and anybody who is able and willing to pay the rent when there is a room vacant can get one? Is not that a fact?—A. I assume it is.

Q. Is not that what Mr. Doughty has that building for?—A. Yes.

D. G. BAIRD, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. What is your residence and occupation?—A. My residence is Beverly, N. J. I am secretary of the Lehigh Valley Railroad Company.

Q. How long have you been secretary of the Lehigh Valley Railroad Company?—A. Since 1903.

Q. Are you also secretary of The Lehigh Valley Coal Company?—A. I am.

Q. How long have you been such secretary?—A. A few years previous to that. I can not recall the date exactly.

Q. Who was your predecessor as secretary of the Lehigh Valley Railroad?—A. John R. Fernshawe.

Q. What became of him?—A. Retired.

Q. Where can he be found?—A. I presume at home, although he is a man of ill health.

Q. Where is his home?—A. Germantown, Philadelphia.

Q. What is the par value of the shares of the Lehigh Valley Railroad?—A. Fifty dollars.

Q. And is the same true of The Lehigh Valley Coal Company?—A. It is.

Q. It appears from exhibits already in the record that The Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad, the Erie Railroad, the Reading Company, the Lake Shore and Michigan Southern Railway Company all together owned on June 29, 1907, $12,000,000 of the capital stock of the Lehigh

Valley Railroad Company. Can you tell us when that stock was acquired by each of those railroads?—A. No; I can not.

Q. Can you give us approximately?—A. I would have to look at the record.

Q. Was it all done at the same time?—A. No.

Q. How far apart were the purchases?—A. I should suppose they were some months apart.

Q. Can you give us the earliest date?—A. I could not without looking at the record.

Q. Where are your books?—A. The books are here in Philadelphia.

Q. You can give us the dates of transfer and to whom the transfers were made, of course?—A. Oh, yes.

(Adjourned until Thursday, October 29, 1908, at 10 a. m.)

Met pursuant to adjournment at room 324, Post-Office Building, Philadelphia, Pa., Thursday, October 29, 1908, at 10 o'clock a. m.

Present: The Examiner; J. C. McReynolds, esq., and G. Carroll Todd, esq., for the United States; and Adelbert Moot, esq., J. F. Schaperkotter, esq., J. H. Torrey, esq., Everett Warren, esq., Robert W. de Forest, esq., and J. D. Campbell, esq., for various defendants.

D. G. BAIRD, a witness for the plaintiff, further examined.

Direct examination by Mr. MCREYNOLDS:

Q. Yesterday you were asked to produce a statement showing the dates when stock in the Lehigh Valley Railroad Company was transferred to the Central Railroad of New Jersey, the Delaware, Lackawanna and Western Railroad, the Erie Railroad, the Reading Company, and the Lake Shore and Michigan Southern Railway Company, and when such shares, or any part of them, were transferred by the railroad companies named and to whom. Have you prepared and are you ready to furnish such a statement?—A. The statement is here, and I present it. It is as follows:

LAKE SHORE AND MICHIGAN SOUTHERN RAILWAY COMPANY.

	Shares.
Acquired:	
1904, October 6	50,000
1906, March 2	64,000
	114,000
Transferred:	
1908, January 23.	
Alfred M. Gray	5,000
William A. Miller	5,000
William J. McHugh	5,000
J. Alfred Stoddard	5,000
Charles F. Schibener	5,000
Wm. B. Stoever	5,000
Edmund R. Teubner	5,000
Oscar B. Ward	5,000
William Beidler	5,000
Frank E. Wyeth	5,000
	50,000
Balance	64,000

ERIE RAILROAD COMPANY.

	Shares.
Acquired:	
1906, March 19	37,000
Transferred:	
1908, January 21.	
Jos. H. Graham	2,000
Geo. A. Smith	2,000
Jos. I. Clark	2,000
A. Howard Ritter	2,000
Alexr. Krumbhaar	3,000
Drexel & Co	20,000
Jos. A. Dieterle	2,000
G. Bremer Brown, jr	2,000
Daniel G. Craig	2,000
	37,000

DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY.

Acquired:	
1904, July 15	5,000
1906, February 28	32,000
	37,000

CENTRAL RAILROAD COMPANY OF NEW JERSEY.

Acquired:	
1906, February 27	32,000

READING COMPANY.

Acquired:	
1904, August 10	20,000

Q. You have been the secretary of The Lehigh Valley Coal Company since what year?—A. As I said yesterday, I do not remember the year. It was for a year or so prior to 1903. I should say since about 1901.

Q. What dividends has The Lehigh Valley Coal Company paid since you have been its secretary?—A. None.

Q. Has it ever paid a dividend during its history that you know of?—A. Not to my knowledge.

Q. Do you know whether or not it paid dividends during the years between 1890 and the time when you became secretary?—A. So far as my knowledge goes, it did not.

Q. Were you connected with the company in any capacity during those years?—A. I was.

Q. What?—A. I have been connected with the Lehigh people in various capacities. I was assistant secretary for a number of years.

Q. How long were you assistant secretary?—A. I became assistant secretary of the railroad, I think, in 1891.

Q. Since 1891 has The Lehigh Valley Coal Company paid a dividend?—A. Not to my knowledge.

Q. Would you have known if it had?—A. I think I would.

Q. What is the capital stock of The Lehigh Valley Coal Company?—A. $1,965,000.

Q. During the years that you have been connected with the Lehigh Valley Railroad Company has it furnished money to The Lehigh Valley Coal Company for its operation?—A. It has furnished money to The Lehigh Valley Coal Company.

Q. Large sums or small?—A. Large.

Q. Each year since you have been connected with it?—A. It varies from year to year.

Q. Is it still furnishing money to The Lehigh Valley Coal Company?—A. I think not.

Q. When did it cease to do it?—A. I can not give you the year.

Q. Can you give it to us approximately?—A. Approximately, 1904.

Q. How does The Lehigh Valley Coal Company now get funds which it needs for its operation?—A. I assume that it gets them out of its own business in the mining and selling of coal.

Q. Does it not borrow large sums of money?—A. At this time?

Q. Yes; since the year 1904?—A. There has been no large borrowing of money, to my knowledge.

Q. Have such sums that have been borrowed been guaranteed by the Lehigh Valley Railroad Company?—A. In that time?

Q. Yes.—A. No.

Q. Are there outstanding bonds of The Lehigh Valley Coal Company?—A. There are.

Q. Who owns them?—A. They are in the hands of the public.

Q. Are those bonds guaranteed by the railroad company?—A. Some of them are.

Q. Has the interest been paid on those bonds regularly?—A. It has.

Q. How many of such bonds are outstanding?—A. To be accurate I would rather have the figures. I could tell you in round figures positively. I will have to give you the several issues of bonds.

Q. Give us the total of the outstanding bonds, if you can, in round figures?—A. In round figures, the total issues are about $12,850,000. That may vary.

Q. You have produced, and it has been put in the record as government Exhibit No. 57, a statement purporting to show the stock in anthracite coal companies owned by the Lehigh Valley Railroad Company. Does that railroad company own stock in any other anthracite coal companies except those shown in that statement?—A. I think there is one more that ought to go on here, The Highland Coal Company.

Q. How much does the railroad company own of its stock, and what is its capital stock?—A. I think the capital stock is $480,000, and the Lehigh Valley Railroad Company owns one-fourth of it. The Lehigh Valley Railroad Company also owns a few shares of stock of the Packer Coal Company, and a minority interest in The Temple Iron Company.

Q. Who owns the capital stock of the Wyoming Valley Coal Company?—A. The Lehigh Valley Coal Company owns the outstanding stock.

Q. All of it?—A. All of the outstanding stock, amounting to $1,300,000.

Q. From whom did The Lehigh Valley Coal Company acquire the stock of the Wyoming Valley Coal Company?—A. From the Lehigh Valley Railroad Company.

Q. When?—A. In 1907.

Q. Do you know when the Lehigh Valley Railroad Company first acquired the stock of the Wyoming Valley Coal Company?—A. It acquired a control of it many years ago. I should say as far back as in the eighties.

Q. Does The Lehigh Valley Coal Company own stock in any other anthracite coal company except the Wyoming Valley Coal Company?—A. I can not recall now that it does.

Q. Does the Lehigh Valley Railroad Company own any coal lands?—A. It does not.

Q. Did it ever own any?—A. It did.

Q. When?—A. As early as 1864 it owned them.

Q. Down until what time?—A. Down to 1895 or 1896, I should say.

Q. Then what did it do with those lands?—A. Sold them to the Hazelton Coal Company.

Q. What became of the Hazelton Coal Company?—A. It became merged into The Lehigh Valley Coal Company.

Q. Do you know what the Hazelton Coal Company paid the Lehigh Valley Railroad Company for those lands?—A. I do not.

Q. The Hazelton Coal Company was itself owned by the Lehigh Valley Railroad Company?—A. It was.

Q. The Lehigh Valley Railroad Company operates railroads into each one of the three anthracite coal regions, the southern, middle, and northern, does it not?—A. It does.

Q. It carries these coals to what point at or near New York Harbor?—A. That is out of my province. I can not answer that question. I have nothing to do with the operating.

Q. Does the Lehigh Valley Railroad Company ship coal to Philadelphia?—A. I do not know.

Q. Have you any information concerning whether or not between the years 1893 and 1901 the Lehigh Valley Railroad Company, while having a published rate of freight, made settlements, from time to time, with independent operators who shipped coal over its lines to New York Harbor upon a basis of a given per cent of the selling price of coals at that point?—A. I have no information.

Q. Was it your duty to settle the accounts with independent shippers for freight?—A. It was not.

Q. Whose duty was it during the years 1893 to 1901 to look after that matter?—A. I can not tell you now.

Q. Give us the name of the one who would have charge of it, if you can?—A. The chief accounting officer and treasurer. During that period the accounting officer was Isaac McQuilkin. The treasurer during that period was William C. Alderson.

Q. Is Mr. Alderson, the treasurer, living, and, if so, where?—A. He is living, and is still the treasurer. His office is in Philadelphia.

Q. What connection did George S. Taylor have with the Lehigh Valley Railroad Company between 1893 and 1901?—A. I do not remember that.

Q. Was he not the general coal freight agent during that time?—A. He may have been.

Q. Is he living or dead?—A. He is dead.

Q. What connection did Mr. Alfred Walter formerly have with the Lehigh Valley Railroad Company and The Lehigh Valley Coal Company?—A. President.

Q. Is he living or dead?—A. He is dead.

Q. When did he die?—A. Within the past two years.

Q. How long was he the president of these companies?—A. About six years. From July, 1897, to December 1, 1902.

Q. Are you acquainted with the business between The Lehigh Valley Coal Company and the Markle Company?—A. No.

Q. Do you have anything to do with the settlements between those companies?—A. I have not.

Q. Who does make those settlements?—A. That I could not tell you.

Q. Who is the treasurer of The Lehigh Valley Coal Company?—A. Mr. Alderson.

Q. Have you possession of the contract made in 1889 between Markle & Co. and The Lehigh Valley Coal Company?—A. I have.

Q. Have there been any modifications of that original contract?—A. I think not.

Q. Are the parties or their successors operating to-day under that contract?—A. They are.

Q. Please produce a copy of the contract for our examination, and if we desire we will put it into the record as government Exhibit No. 151?—A. I will do so.

(The contract was produced and introduced in evidence as government Exhibit No. 151.)

Cross-examination by Mr. SCHAPERKOTTER:

Q. You have been asked for information in regard to advances made by the Lehigh Valley Railroad Company to The Lehigh Valley Coal Company. Is it any part of your duties to know of advances, if any, that are made by the railroad company to the coal company?—A. Not at the present time.

Q. Your information, if any, in regard to advances made by the railroad company to the coal company would be such information as you could obtain from published reports, would it not?—A. It would.

Q. And the report of the Lehigh Valley Railroad Company shows the amount of advances made by the railroad company to the coal company, does it not?—A. It does.

Q. And the reports for the year beginning with 1908 and for years from 1902 to 1908 would show the amount of the advances by the railroad company to the coal company, would they not?—A. That is right.

Q. In regard to the anthracite coal lands owned by the Lehigh Valley Railroad Company, the lands which the Lehigh Valley Railroad Company owns were lands located in Hazleton and in Beaver Meadow, were they not?—A. That is right.

Q. How were those lands originally acquired by the Lehigh Valley Railroad Company?—A. Both the Hazleton lands and the Beaver Meadow lands were acquired by reason of merger of the railroad companies that theretofore owned them.

Q. What was the object in conveying those coal lands from the railroad company to the Hazleton Coal Company?—A. I can not answer that question.

Q. Was it not in order that the railroad company might disassociate itself entirely from the business of mining coal?—A. I have no doubt that that was the moving reason.

Q. And in order to effect that purpose there was a coal company organized, was there not?—A. There was.

Q. What was the name of that coal company?—A. The Hazleton Coal Company.

Q. And it acquired the title to the Hazleton and Beaver Meadow lands?—A. That is right.

Q. Subsequently the Hazleton Coal Company was merged into The Lehigh Valley Coal Company?—A. That is correct.

Q. And thus the Lehigh Valley Railroad Company divested itself of any title to any anthracite coal lands which it owned in the State of Pennsylvania?—A. It did.

LEWIS NEILSON, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. What is your residence and occupation?—A. My residence is St. Davids, Pa.; my occupation is secretary of the Pennsylvania Railroad Company.

Q. Where is your office?—A. My office is at Broad Street Station, Philadelphia.

Q. What are your general duties as secretary?—A. General secretarial duties, officer of the board, keep a record of its proceedings, custodian of records, and so forth.

Q. You have heretofore caused to be prepared and furnished the Government certain information concerning the Pennsylvania Railroad Company, which I show you. Please state whether that was prepared under your direction, and whether it indicates correctly what is shown by the books of the company.—A. The statements of list of officers and directors, one as of 10th of June, 1907, and the other the 28th of September, 1908, were prepared under my direction, and are correct. The other two statements were prepared at my request, and I know nothing further about them.

Q. By whom were they prepared?—A. They were prepared by the general coal freight agent.

Q. Is he under your general direction?—A. No, sir.

Q. You produced those statements in response to a subpœna issued by the Government, did you not?—A. Yes; the subpœna asked me

to bring certain papers, and to show that I had no spirit to stand on technicalities I requested the information and brought it. I know nothing at all about it.

Q. Who prepared these statements concerning the anthracite coal?—A. They were both prepared by the general coal freight agent, Joseph G. Searles.

Q. I show you here list of directors and officers of the Pennsylvania Railroad Company, which is introduced into this record as Government Exhibit No. 127. Was that statement prepared under your direction, and does it indicate correctly what is shown by the books of the Pennsylvania Railroad Company?—A. Yes, sir.

Q. Who owns the stock of the Northern Central Railway Company?—A. The stock of the Northern Central Railway Company is owned by the public. The Pennsylvania Railroad Company owns some of it.

Q. Does it own a majority of it?—A. No, sir; it did not, to my last information.

Q. Does The Pennsylvania Company own any of the stock of the Northern Central Railway Company?—A. I can not answer that offhand. I am not an officer of either company. I can find out and let you know.

Q. What is the relationship between the Northern Central Railway Company and the Pennsylvania Railroad Company?—A. The relationship of a stockholder in a corporation.

Q. Who operates the Northern Central Railway Company?—A. The Northern Central Railway Company.

Q. Where do its lines lead.—A. The line runs from Baltimore to Sunbury and from Elmira to the lakes.

Q. Are the trains of the Pennsylvania Railroad Company operated over the lines of the Northern Central Railway Company?—A. No; they are not.

Q. Who is the president of the Northern Central Railway Company?—A. James McCrea.

Q. Who is the president of the Pennsylvania Railroad Company?—A. James McCrea.

Q. Who is the vice-president of the Northern Central Railway Company?—A. John G. Green is one of them.

Q. Is he also vice-president of the Pennsylvania Railroad Company?—A. Yes, sir.

Q. Are the executive officers of the Northern Central Railway Company and the Pennsylvania Railroad Company the same?—A. No, sir; that is, if you mean the corporate executive officers.

Q. Has the Pennsylvania Railroad any interest in any part of the capital stock of the Northern Central Railway Company except the one-fourth part of its shares which you have said it owned?—A. Not to my knowledge.

Q. Who is the secretary of the Northern Central Railway Company?—A. Stephen W. White.

Q. Where is his office?—A. Broad Street Station, Philadelphia.

Q. Are the executive offices of the Northern Central Railway Company in Broad Street Station, Philadelphia?—A. Yes, sir.

J. G. SEARLES, a witness for the plaintiff, recalled.

Direct examination by Mr. MCREYNOLDS:

Q. What is your connection with the Pennsylvania Railroad Company?—A. General coal freight agent.

Q. I show you here certain statements, which I introduce into the record as government exhibits, and showing the number of tons of anthracite coal transported over the Pennsylvania Railroad Company, and the names of the producers of such coal whose collieries are located along the lines of the railroad. Please examine those statements, and state whether you had them made up and whether or not they indicate correctly what is shown by the books and records of the Pennsylvania Railroad Company?—A. Yes, sir; I had those prepared in my office, and they are correct, to the best of my knowledge and belief, as shown by the records of the company.

Mr. MCREYNOLDS. The statements are introduced in evidence as Government Exhibits No. 128 and 129.

Government Exhibit No. 128 shows the total number of tons of anthracite coal transported by the Pennsylvania Railroad Company to tide water in the vicinity of New York, transferred to vessels, and so forth.

Government Exhibit No. 129 shows the producers of anthracite coal with collieries located upon the lines of the Pennsylvania Railroad, and so forth.

Q. What is the freight rate from the collieries in the anthracite regions served by the lines of the Pennsylvania Railroad to tide water, New York Harbor, on prepared sizes?—A. Prepared sizes, $1.40 per gross ton.

Q. How long has that rate been in force?—A. I do not recall now. I think since the early part of 1902. I am not sure.

Q. Are the coals produced by any colliery not located upon lines operated by the Pennsylvania Railroad shipped over the lines of the Pennsylvania Railroad to tide water?—A. Some; yes, sir.

Q. Which ones?—A. I could not testify to that offhand. I think, however, there are some shipments from mines located on the Delaware and Hudson, and some from mines located on the Delaware, Lackawanna and Western Railroad.

Q. The Delaware and Hudson and Delaware, Lackawanna and Western make a charge for the part of the haul which is carried over their rails?—A. We have through rates issued. They get a proportion of the through rate.

Q. Does $1.40 include the proportion that goes to these lines?—A. No, sir; the rates from those collieries are 15 cents higher—$1.55 on prepared sizes.

Q. Why is that?—A. They decline to join us in the lower rates.

Q. That 15 cents is paid by the shipper?—A. No, sir.

Q. Who pays it?—A. It is paid out of the through rate. There is a division of the revenue between those companies and our road.

Q. So as to those collieries the rate is $1.55?—A. On prepared sizes; yes.

Q. Do you know whether the Pennsylvania Railroad formerly itself paid that 15 cents lateral charge, making the entire rate $1.40?—A. I think that it did; yes, sir.

Q. When was that practice discontinued?—A. I really can not recall now.

Q. Can you not give us approximately?—A. No; I think it is about a year and a half or two years ago. About two years ago, I think.

Q. About some time in 1906, you think?—A. I think so.

Q. For how long prior to 1906 had the Pennsylvania Railroad Company itself absorbed, as it is called, these lateral charges?—A. That I could not tell you.

Q. For an indefinite time in the past?—A. Yes, sir.

Q. Do you know why they changed?—A. The Delaware and Hudson and the Delaware, Lackawanna and Western, especially Delaware, Lackawanna, and Western, have their own tide-water line, and their rates were higher than ours, and they were not willing to join the Pennsylvania Railroad Company in lower rates for a short haul from their own road than they would receive if the coal went over their own road.

Q. Do you mean that these railroads objected to the Pennsylvania Railroad absorbing these 15 cents for lateral charges?—A. Under the present law the tariffs have to be concurred in by all of the railroads party to them.

Q. And they refused to concur?—A. They declined to concur; yes, sir.

Q. Do you know what freight rate the Susquehanna Coal Company pays to the Pennsylvania Railroad Company for carrying its coals to tide water, New York?—A. It pays the tariff rates.

Q. Do you know how those settlements are made?—A. No; that is an accounting matter. But I think the freight charges are collected from the Susquehanna Coal Company by our agent at South Amboy.

Q. The Pennsylvania Railroad Company reaches all three of the coal regions in the anthracite district, does it not?—A. Yes, sir.

Q. And carries coal from them all to Philadelphia and New York.—A. Yes, sir; I think to some extent.

Q. And the rate from all the regions to New York Harbor is the same?—A. By our road; yes, sir.

Cross-examination by Judge Moot:

Q. The amendments to the interstate commerce act took effect by virtue of the suspension act the last of August, 1906?—A. I think so; yes, sir.

Q. And was that the law you referred to as making a change and requiring railroads to concur in each other's tariffs if they were connecting lines?—A. I think the rulings of the commission required that.

Q. Based on that?—A. Yes, sir.

Q. That was what you had in mind, the rulings of the commission under those amendments?—A. Yes, sir.

Q. Was it before or after those rulings of the commission based on these amendments, according to your best recollection and belief, this change was made by the Pennsylvania, and when it ceased to absorb this 15 cents?—A. I think it was after that; yes, sir.

Q. Before that time, as I understand you, in the business of the Pennsylvania with the mines of the Delaware and Hudson and the mines of the Delaware, Lackawanna and Western from which it hauled the coal brought to it, it had absorbed these 15 cents?—A. Yes, sir.

Q. Your road, you say, reaches tide water. Do you know whether the coal from those mines, the Delaware and Hudson and Delaware, Lackawanna and Western went to tide water, or whether it went to other points?—A. I could not testify positively as to that, but I think it did. Some of it went to tide water.

Q. You think some of it went to tide water?—A. Yes, sir.

Q. At South Amboy?—A. Yes, sir.

Q. South Amboy is on the waters of the lower bay of New York?—A. Yes, sir; at the mouth of the Raritan River.

Q. Do you know about what it cost to convey coal from South Amboy to New York or Brooklyn points?—A. I think the boat freights vary from 18 to 20 or 22 cents, something like that.

Q. That is your best information?—A. Yes, sir.

Q. We have, I think, statements here, but you may tell us generally whether under this rate of $1.40 to South Amboy the anthracite coal business of the Pennsylvania to South Amboy has been increasing or decreasing in volume, or what its relative condition is?—A. It varies. I do not think there has been any considerable increase in it. It varies. Some years it shows a decrease as compared with the previous year.

Q. Something was said about your lines reaching all these regions, and you qualified your answer somewhat to the question put. What did you mean; that you reached some points in all the three anthracite coal regions?—A. Yes, sir.

Q. But not all points in those regions?—A. No, sir.

Q. Is it practical to send coal over your lines, as a general thing, if your lines do not reach the collieries in which the coal is produced?—A. No; I do not think it is. We could only do it by concurrence of the other railroads. We could not reach them with our own tracks. I mean collieries located on other roads.

Q. In other words, the anthracite coal is like any other business in that respect; if it is produced on the line of another railroad, then to get in on that business you have to concur with that other railroad, or get it to concur with you in some joint rate that will enable the two acting together to move it to market?—A. Yes, sir.

Q. As a practical railroad proposition, where anything, coal or anything else, is produced on the lines of a given railroad, if those lines

are substantially as good a connection to market as the lines of some other connecting railroad, which is the more economical in the end for the public and the producer alike, to send by the road on which it is produced, or partly by that road and partly by another road?—A. I should say by the road on which it is produced.

Q. Why?—A. Their car supply would probably be better. I do not know of any advantage to them in sending over a joint line if they have a through line of their own direct from the collieries to destination, unless there should be some decided advantage in the delivery.

Q. Unless there is some incidental advantage in the delivery, or something of that kind, to offset the advantage of the direct route, generally speaking, the direct route is regarded by railroad and business men as the preferable route of the two?—A. I think so; yes, sir.

GEORGE H. ROSS, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. What is your address and occupation?—A. 4240 Spruce street. I am vice-president and secretary of the Susquehanna Coal Company.

Q. Are you an officer of the Pennsylvania Railroad Company?—A. No, sir.

Q. How long have you been an officer of the Susquehanna Coal Company?—A. I have been secretary since 1894. I have been vice-president since 1906.

Q. What are your duties as secretary?—A. To keep the records of the board and look after the documents of the company, the registered documents.

Q. General superintendence of its bookkeeping department, I presume?—A. No; I have nothing to do with the accounting department.

Q. What are your duties as vice-president?—A. I have charge of the sales.

Q. Who was in charge of the sales before you became vice-president in 1906?—A. The president.

Q. In obedience to a subpœna, you have prepared and furnished us with certain data purporting to have been compiled from the books of the Susquehanna Coal Company and other affiliated companies?—A. Yes, sir.

Q. I show you these compilations and statements, and ask you to identify them, and state whether they were prepared under your supervision, and show accurately what is indicated by the books of the company, in order that we may introduce them as part of the record.—A. These statements were either prepared by me personally or by my direction or request by other officers of the various companies shown, and I believe that they show accurately the things indicated by the books and records of the sundry companies.

The statements identified by the witness are introduced in evidence as Government Exhibits No. 130 to 140, inclusive.

Exhibit No. 130 shows the officers and stockholders, etc., of the Susquehanna Coal Company.

Exhibit No. 131 shows the officers and stockholders, etc., of the Mineral Railroad and Mining Company.

Exhibit No. 132 shows the officers and stockholders, etc., of the Summit Branch Mining Company.

Exhibit No. 133 shows the officers and stockholders, etc., of the Lykens Valley Coal Company.

Exhibit No. 134 shows the officers and stockholders, etc., of the Lytle Coal Company.

Exhibit No. 135 shows the number of acres of land in the anthracite region owned and held, etc., by the Susquehanna Coal Company.

Exhibit No. 136 shows the total number of acres of land in the anthracite region owned and held by the Mining Railroad and Mining Company.

Exhibit No. 137 shows the total number of acres of land in the anthracite region owned and held by the Summit Branch Mining Company.

Exhibit No. 138 shows the number of acres of land in the anthracite region held and owned, etc., by the Lytle Coal Company.

Exhibit No. 139 shows the producers of anthracite coal whose collieries are located along the lines of the Pennsylvania Railroad, which sell to the Susquehanna Coal Company, etc.

Exhibit No. 140 shows the shipments of anthracite coal to South Amboy, N. J., by the Susquehanna Coal Company, etc.

Q. The statement, Government Exhibit No. 130, showing the stockholders of the Susquehanna Coal Company, shows 3 shares each standing in the names of nine individuals. Are those shares really the property of the Pennsylvania Railroad Company?—A. They are the property of the Pennsylvania Railroad Company.

Q. And are held by those people to qualify them as directors, I presume?—A. That is right.

Q. The Pennsylvania Railroad Company, therefore, really owns every share of the Susquehanna Coal Company?—A. It does.

Q. Does the Pennsylvania Railroad Company own every share of the stock of the Mineral Railroad and Mining Company?—A. No, sir; it owns one-third of the 50,000 shares. It owns all the shares of that company except those standing in the name of the Northern Central Railway Company.

By Mr. TODD:

Q. Do you know whether the Pennsylvania Railroad Company has any interest in the shares of the Mineral Railroad and Mining Company standing in the name of the Northern Central Railway Company?—A. I do not.

Q. How many of the shares of the Summit Branch Mining Company are in fact owned by the Pennsylvania Railroad Company?—A. All of them.

Q. Did the Pennsylvania Railroad Company acquire them on the dates set down on Government Exhibit No. 132, showing a list of the stockholders?—A. I can not say. I only know from my books when they were placed in the names of those other parties.

Q. You do not know when the Pennsylvania Railroad itself acquired them?—A. I do not know.

Q. Which of the shares of the Lykens Valley Coal Company are owned by the Pennsylvania Railroad Company?—A. None of them.

Q. Are any of them owned by any coal company whose stock is controlled by the Pennsylvania Railroad Company?—A. Excepting the shares in the name of Sara E. S. Applebee, William C. Haggerty, John B. Storm, and Thomas A. Emmett, all the shares of stock are the property of the Summit Branch Mining Company.

Q. Which of the shares of the stock of the Lytle Coal Company shown on Government Exhibit No. 134 are owned by the Susquehanna Coal Company, in addition to those standing in its own name?—Those standing in the name of John P. Green, Samuel Rea, George H. Ross, John B. Thayer, and Morris Williams.

Q. Do the Susquehanna Coal Company, the Mineral Railroad and Mining Company, the Summit Branch Mining Company, the Lykens Valley Coal Company, or the Lytle Coal Company own stock in any other anthracite coal company except what these exhibits show?—A. They do not.

Q. The statement showing the lands leased to others by the Mineral Railroad and Mining Company shows that on April 1, 1892, 4,433 acres of its coal lands were leased to some other person or corporation. Who was the lessee?—A. The lessee is the Susquehanna Coal Company. It got that lease by assignment, the former lessee having gone out of business.

Q. Who was the former lessee?—A. The Union Coal Company.

Q. Was that a coal company whose stock was owned by the Pennsylvania Railroad Company?—A. No; it had nothing to do with it.

Q. It was an entirely independent corporation?—A. Yes, sir.

By Mr. McREYNOLDS:

Q. Do you know whether or not the 65 per cent contracts between the Susquehanna Coal Company and other producers of anthracite coal are substantially in form the same as contracts upon a similar basis executed by other coal-mining companies?—A. I do not.

Q. You do not know what the contracts existing between the independents, for instance, and The Lehigh Valley Coal Company are?—A. No, sir.

Q. Are you acquainted with the contracts existing between the Susquehanna Coal Company and the parties from whom they purchase under what is known as the 65 per cent contracts?—A. Yes, sir.

Q. Are those contracts all in substantially the same form?—A. They are.

Q. Do they cover the life of the colliery to which they relate?—A. In no case.

Q. What length of time do they cover?—A. Some of them run for a year and some of them are for five years.

Q. But they do not cover the life of the colliery?—A. No; in no case.

Q. What is the longest term?—A. I think the longest one was about twelve years.

Q. When were the first of them put in force?—A. As far as I know, in 1904. I know nothing back of that because prior to that time the Susquehanna Coal Company had not anything to do with them.

Q. Were those contracts in existence prior to 1904?—A. They may have been, but not with the Susquehanna Coal Company.

Q. Who were they prior to that time?—A. Stickney & Conyngham, who were our sales agents, may have had contracts—in fact, they did have contracts with them—but the Susquehanna Coal Company never had any contracts until 1904.

Q. Their sales agents took them in their own name prior to that time?—A. Yes, sir.

Q. Did the sales agents assign these contracts over to the Susquehanna Coal Company in 1904?—A. They did.

Q. To the petition in this case there is annexed as Exhibit A what purports to be a general form of what are known as the 65 per cent contracts, and in the second section of that Exhibit A are the terms. Look at that second section and see if the price and terms specified there are the same as those existing in the contracts between the Susquehanna Company and other producers.

(Judge Moot objects to the question as improper.)

A. As far as I can recall from my memory, reading these contracts in our possession, these prices are the same.

Q. Upon what average prices are settlements made by the Susquehanna Coal Company with these parties from whom it purchases this coal?—A. The average free on board prices at New York Harbor.

Q. How are those arrived at, and by whom?—A. Presumably by Mr. Ruley.

Q. Why do you say "presumably?"—A. Because they come in his envelopes.

Q. Does the Susquehanna Coal Company receive them from Mr. Ruley from month to month?—A. Yes, sir.

Q. And makes settlements upon those Ruley averages?—A. We do.

Q. Does the Susquehanna Coal Company report to Mr. Ruley its sales in New York Harbor?—A. I can not answer that. We do not from our office.

Q. Do you know whether anybody else does?—A. I do not.

Q. If it is done, by whom is it done?—A. It would be done by our New York agent.

Q. Have you not instructed your New York agent to do that thing?—A. No, sir.

Q. As matter of fact, you do not know whether he does or not?—A. I presume that he does it. I say we do not do it.

Q. Is it not your understanding that your New York agent does it?—A. I say, I presume he does it. He does not do it under any instructions from us. Our name appears on the list of the sellers in New York Harbor as obtaining certain prices, and Mr. Ruley does not get it from our offices. He possibly gets it from the New York offices.

Q. In what region in the anthracite coal districts are the coals purchased by the Susquehanna Coal Company produced?—A. Wyoming region and western part of the Schuylkill region.

Q. Is a considerable portion of this purchased coal shipped to New York Harbor where it is sold f. o. b.?—A. That would be a pretty hard question to answer because it loses its identity as soon as it comes into our possession.

Q. Some of it is shipped there?—A. Yes, sir; some of it. You said a considerable portion.

Q. What freight rate is paid on these shipments?—A. To tide water?

Q. Yes.—A. $1.55 on some and $1.40 on the other, prepared sizes.

Q. Why the difference in that rate?—A. It is the published rate.

Q. Do you mean that from different regions there is a different freight rate, or on different sorts of coal there is a different freight rate?—A. No, sir; I say from the Wyoming region you pay $1.55 on some of the coal and some you pay $1.40, the same as the coal that we get from the western part of the Schuylkill region. I think Mr. Searles told you that there was a difference there.

Q. What is the rate upon all coal which is produced by collieries reached by the lines of the Pennsylvania Railroad?—A. To tide water?

Q. Yes.—A. $1.40.

Q. Then the $1.55 rate applies to coal which is produced by collieries situated on the lines of other railroads?—A. Certainly.

Q. And the additional 15 cents is paid to the connecting lines?—A. I do not know what becomes of it.

Q. About how much coal does the Susquehanna Coal Company sell f. o. b. New York Harbor?—A. I judge in the neighborhood of a million and three-quarter tons per year. I think it is on the statement.

Q. Is the Susquehanna Coal Company the selling agent for any other producer of anthracite coal?—A. No.

Q. You have told us that the Shipman Koal Company, the Greenough Red Ash Company, the West Nanticoke Coal Company, and the Pine Hill Coal Company, producers of anthracite coal, sell their output to the Susquehanna Coal Company under what are called 65 per cent contracts. Are the collieries of those four companies located on the lines of the Pennsylvania Railroad?—A. They are.

Q. Are the collieries of the West End Coal Company likewise located on the lines of the Pennsylvania Railroad?—A. They are.

Q. The freight rate, therefore, upon coals bought from the five companies just named, to tide water, New York Harbor, over the lines of the Pennsylvania Railroad Company is $1.40?—A. Yes, sir.

Q. How long has that rate been in existence?—A. To the best of my knowledge and belief, four or five years.

Cross-examination by Judge Moore:

Q. Did you make any statements to show the total output of these various companies year by year?—A. For this purpose?

Q. Yes.—A. No.

Q. You were not asked to, I assume?—A. No, sir.

Q. Is the total output of these various companies marketed at the New York Harbor?—A. No.

Q. The statement here with reference to the amount carried to New York Harbor, does that cover simply the amount carried from these collieries, or does it cover the entire amount carried by the Pennsylvania Railroad Company to the New York Harbor?—A. That covers the amount from those various collieries as well as the purchased coal.

Q. Shipments of anthracite coal?—A. Yes, sir.

Q. State whether it includes any shipments of what they are calling independent operators, or whether it simply includes shipments over the Pennsylvania Railroad from those various companies that you have named here.—A. Does it include anything but that?

Q. Yes.—A. It does not.

Q. Do these various companies that you have named here, that ship to New York Harbor, ship simply coal sold in and about New York, or do they ship all the coal sold in and about New York, New England, and points reached by water?—A. All the coal that is shipped to South Amboy, shown here, is for shipment east of Amboy. Some may go to New York City. The bulk of it goes to the eastern markets.

Q. I notice that statement shows a large increase of the amount shipped to New York Harbor from year to year. Can you tell me whether the amount shipped to New York Harbor from year to year has relatively become the bulk of your coal, or whether it is the surplus of your coal?—A. No; it is not the bulk of our coal. The reason of this increase is—the statement shows a million and seventy-one thousand tons in 1904 and in 1905 it shows an increase of a million one hundred and fifty-seven thousand tons. That is due to the fact, as stated here awhile ago, that in 1904 we purchased the coal ourselves, and a portion of it went to New York Harbor, or to South Amboy rather, for reshipment.

Q. That was due to the change in the method by which you purchased the coal yourselves?—A. Yes, sir.

Q. Before that it had been handled by Messrs. Stickney and Conyngham?—A. Yes, sir.

Q. A firm that was in business before that?—A. Yes, sir.

Q. For a long term of years?—A. Yes, sir.

Q. But which ceased to do business at that time?—A. Yes, sir.

Q. And you succeeded to their business?—A. Yes, sir.

By Mr. WARREN:

Q. You said in answer to Mr. McReynolds that the 65 per cent purchase contracts, so called, in many instances were for the life of the colliery?—A. Yes, sir; I did.

Q. Is it not a fact that in many instances they are not even for the total production of the colliery per annum? In other words, they are for a fractional portion of the output of a colliery? You have what are called 65 per cent contracts with companies, without having the right to have all of the product of the colliery?—A. Yes, sir; in other words, all our contracts do not cover the total output of the collieries.

By Judge MOORE:

Q. I infer that your New York coal is your surplus product that is not sold at what you call line points? Is that correct?—A. Not necessarily, because we have a stocking ground up the State where we can put our surplus.

Q. Is it true to any extent that it is the surplus market for supplying your line points?—A. We send no coal to New York that our agent does not request.

Q. You send it rather to line points?—A. We stock it inland, where we can reach all markets.

Redirect examination by Mr. MCREYNOLDS:

Q. We would like you to furnish us with a statement showing for the last five years the amount of coal purchased by the Susquehanna Coal Company from the five companies named in Government Exhibit No. 139.—A. I will prepare such a statement and have it entered on the record at this point.

The statements furnished by the witness are as follows:

STATEMENT OF COAL PURCHASED FROM THE COMPANIES NAMED BELOW BY THE SUSQUEHANNA COAL COMPANY UNDER 65 PER CENT CONTRACTS.

	1904.	1905.	1906.	1907.
	Tons.	Tons.	Tons.	Tons.
West Nanticoke Coal Co.	18,110	25,095	48,505	40,582
Pine Hill Coal Co.	42,260	29,308	4,570	76,560
Shipman Koal Co.	118,625	147,737	101,050	78,804
Greenough R. A. Coal Co.	154,144	112,468	180,238	265,425

STATEMENT OF COAL PURCHASED FROM THE COMPANY NAMED BELOW BY THE SUSQUEHANNA COAL COMPANY WITHOUT CONTRACT.

	1904.	1905.	1906.	1907.
	Tons.	Tons.	Tons.	Tons.
West End Coal Co.	275,269	230,467	181,807	297,067

JOSEPH S. HARRIS, a witness for the plaintiff, recalled.

Direct examination by Mr. MCREYNOLDS:

Q. You told us when on the stand heretofore that you were once the president of The Lehigh Coal and Navigation Company?—A. I was.

Q. During what years were you the president of that company?—A. From 1882 to 1893.

Q. Did The Lehigh Coal and Navigation Company own and operate the Panther Creek Railroad during those years?—A. The Lehigh Coal and Navigation Company does own the Panther Creek Railroad. It uses it for carrying its coal from its mines to its breaker, and for transporting it to a point at which it delivers it to the Jersey Central. The Jersey Central operated the road for passengers and freight. The Lehigh Coal and Navigation Company only use it to assemble its coal.

Q. Was the Lehigh Coal and Navigation Company the owner of this Panther Creek road during the years from 1882 to 1893?—A. Yes, sir.

Q. And operated it during those years for the purpose of assembling its coal?—A. Yes, sir.

Q. Where did the Panther Creek road during those years connect with the Reading system?—A. At Tamaqua.

Q. Did The Lehigh Coal and Navigation Company sell coal in Philadelphia during the years 1882 to 1893?—A. Yes, sir.

Q. How were the coals that were sent to Philadelphia shipped?—A. They mostly went down the Lehigh and Susquehanna Railroad to Bethlehem, and from there down the North Pennsylvania Railroad.

Q. Is that part of the Reading system?—A. The North Pennsylvania Railroad is.

Q. Were those coals carried by the Panther Creek Railroad over to Tamaqua——A. No, sir; the coal that was delivered to the railroad companies for transportation was all delivered at Hauto, which is a point on the Panther Creek road. Hauto is the junction with the Jersey Central Railroad.

Q. At what point were the coals of The Lehigh Coal and Navigation Company, which came to Philadelphia, delivered to the Philadelphia and Reading Railway Company?—A. There was a little coal delivered to the Philadelphia and Reading. It was sent down the Jersey Central, because we were interested in the earnings of the Jersey Central.

Q. It was entirely possible to deliver those coals at Tamaqua to the Philadelphia and Reading, was it not?—A. Yes, sir; it was.

Q. The Lehigh Coal and Navigation Company owned a canal coming down in the general direction of Philadelphia, did it not?—A. Yes, sir.

Q. During the years you were president of the company some coal came to Philadelphia market over that canal?—A. It did. There was also some coal shipped from Phillipsburg by the Belvidere and Delaware, which was one of the Pennsylvania's lines, to Philadelphia.

Q. When you were on the stand before you were asked concerning testimony which you gave back in the year 1886 in the case of the Commonwealth of Pennsylvania versus The Philadelphia and Reading Railroad Company and other defendants, pending in the court of Dauphin County. I believe you said you remembered that you did testify in that case?—A. Yes, sir.

Q. That has been a long time ago, and you were unable to recall whether you gave certain testimony concerning which you were asked?—A. Yes, sir.

Q. State whether the testimony you gave at that time was in harmony with the facts as you then understood them.—A. It was.

Q. I show you a certified copy of the testimony which you gave in that cause, and will introduce it as part of the record as Government Exhibit No. 145. Please examine it and state whether you desire to make any corrections of the statements made therein, or not, and whether, so far as you can now tell, the statements therein are true.

Judge CAMPBELL. I object to this method of introducing the subject, unless the witness is given an opportunity to read the whole of his testimony before answering any question propounded to him.

Mr. MCREYNOLDS. The witness may have all the time to read the testimony that he may desire.

A. My recollection of the matter contained in that testimony at that time, my study of it was very much more careful than I should be able to give it now, and I do not desire to make any corrections.

Q. So far as you know, then, what you stated at that time in your depositions represented the facts?—A. Yes, sir.

Mr. WARREN. Understanding that the Government now offers this testimony as an exhibit, I desire to note an objection to its introduction, on the ground that it is incompetent, as well as immaterial, so far as my client is concerned.

(Judge Campbell also desired the same objection noted.)

(Judge Moot also desired the same objection noted.)

Cross-examination by Judge MOOT:

Q. You have not read this deposition of over 100 pages, that has been shown to you, in the few minutes you have had it in your hand?—A. I have not. I have looked at the certification of it. It seemed to be correct.

Q. You assume that the document is correctly transcribed and certified?—A. Yes, sir.

Q. You never have read over your testimony, as I understood you the other day, since it was given?—A. No, sir.

Q. You never have read over your testimony to see whether it was correctly reported by the stenographer or not?—A. I do not know that I ever did.

Q. I understood you to say the other day that your memory of the details to which Mr. McReynolds then called your attention by reading some portions of it to you was so far gone that you could not then recall—that is, when he questioned you—how the fact was any longer?—A. That is correct.

Q. So that all you can now say is that you were sworn, that some stenographer was present, and that you did give the facts in your testimony as correctly as you understood them, whether it was correctly reported or not?—A. Yes, sir.

ROBERT J. MONTGOMERY, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Please state your address and your occupation.—A. I live 239 Armat street, Germantown, Philadelphia. I am general coal agent of The Philadelphia and Reading Coal and Iron Company, stationed at Philadelphia.

Q. What are your duties as general coal sales agent of The Philadelphia and Reading Coal and Iron Company?—A. I have charge of the sales of the coal for that company.

Q. Of anthracite coal?—A. Anthracite coal.

Q. Do you sell any bituminous coal?—A. No, sir.

Q. Go a little more into the particulars of your duties as general sales agent. Tell us over what territory your operations extend. What are your duties and what are your rights?—A. My duties begin with when the coal is placed on the cars at the mines. I am to find the territory for the sale of that coal. The sales of our coal extend over the States of Pennsylvania, New York, New Jersey, the eastern market, and the western market.

Q. Are you a salaried employee of the company or do you operate upon a commission basis?—A. On salary.

Q. Do you determine the prices at which the coals of The Philadelphia and Reading Coal and Iron Company shall be sold?—A. No, sir.

Q. Who does determine them?—A. That has been determined by the president, and I imagine in consultation with the former vice-president.

Q. Who is the president?—A. Mr. George F. Baer.

Q. Does he issue instructions to you fixing the prices at which you shall sell the coals?—A. He has not done so yet, for the reason I have not occupied the position long enough, but heretofore he has given such instructions to my predecessor, Mr. Thomas M. Richards.

Q. How long have you been the coal sales agent of The Philadelphia and Reading Coal and Iron Company?—A. I have been the general coal agent since July 1, 1907.

Q. Since 1907 there have been no changes in the prices of coals?—A. Yes, sir; but the first vice-president had charge as my superior officer, and these circulars were issued under his directions.

Q. Have there been any changes in the prices of the prepared sizes of anthracite coal since you have been the coal agent?—A. The regular monthly changes there have.

Q. You mean that on the 1st of April the price was reduced from $5 to $4.50 a ton?—A. F. o. b. New York Harbor; yes; for prepared sizes, free-burning white-ash coal.

Q. How long have the prices for the character of coal which you have described f. o. b. New York Harbor been $4.50 beginning April 1 and increasing 10 cents each month thereafter until it reached $5?—A. I think since 1902, if my memory serves me correctly, with the possible exception of one month during 1906.

Q. In 1906 the usual April circular was not issued until May?—A. Not issued until May .

Q. The usual circular reducing the price 50 cents a ton was not issued until May?—A. It was only reduced 40 cents in May.

Q. So that the price was not reduced in April at all that year?—A. No, sir.

Q. What were your duties prior to the time you became the general coal sales agent of the company?—A. I was the New York sales agent from March 1, 1904, until July 1, 1907.

Q. In round numbers, about how much coal is sold f. o. b. New York Harbor annually by The Philadelphia and Reading Coal and Iron Company?—A. From a million and a half to a million and three-quarters tons.

Q. What proportion of that is free-burning white-ash coal?—A. Seventy per cent, probably 75 per cent.

Q. Does The Philadelphia and Reading Coal and Iron Company issue monthly circulars announcing the prices of coal?—A. It does.

Q. What time in the month are they issued?—A. In the latter part of the month; I should say about the 25th; anywhere from the 25th up to the last day of the month, so that they will be in the hands of the customers on the 1st. We try to have it that way.

Q. How long has it been the custom of the company to issue such circulars?—A. Ever since I have been with them.

Q. Have you got copies of the circulars which have been issued with you?—A. I have not got them with me, but we can furnish them.

Q. Will you be kind enough to produce these circulars for our inspection so that if so advised they may be introduced in evidence as government exhibits? Bring them commencing January 1, 1900.—A. I will do so.

Q. The prices, as I understand from your former answer, f. o. b. New York Harbor, for prepared sizes have been the same since 1902?—A. Yes, sir.

Q. With the April, 1906, deduction which you have mentioned excepted?—A. Yes, sir.

Q. Was there a change of price made in 1902?—A. I can not say positively, but I think there was. Our circular will show.

Q. What month?—A. I can not answer.

Q. Will your circular show that?—A. Yes, sir.

Q. Where does the anthracite coal sold by The Philadelphia and Reading Coal and Iron Company f. o. b. New York Harbor come

from?—A. Schuylkill region entirely, in the State of Pennsylvania.

Q. Over what lines is it carried from the mines in the Schuylkill region?—A. The Philadelphia and Reading Railway Company.

Q. Give us the course which it follows along the lines of that road.—A. I do not know as I can give the original names of the companies, because I am not familiar with them. The Reading Railway Company at the shipping points in the region have scales. We have scales at Tamaqua and St. Clair and Cressonia. The coal follows the line of the Reading Railroad down to Reading, on to Bridgeport, crosses the Schuylkill River there, passing through Norristown, takes the Plymouth branch, passes to a point above Glenside, where it goes on to the North Pennsylvania Railroad, and on the North Pensylvania Railroad to Yardley, then on to the Bound Brook Railroad, and from there to Port Reading Junction, and over the Port Reading Railroad to the shipping port at Port Reading.

Q. What is the point near Glenside to which you refer?—A. It is the connecting line between the Plymouth branch and the North Penn. It is right above Glenside. That is about 12 miles outside of Philadelphia.

Q. Do you sell the coals of The Philadelphia and Reading Coal and Iron Company in Philadelphia?—A. I do not sell them personally. I have charge of the agent who sells them.

Q. How do those coals come from the mines to Philadelphia?—A. They come down through the city of Reading, thence to Bridgeport, and thence down the main line of the Philadelphia and Reading Railway to various points in the city of Pihladelphia.

Q. What you call the main branch of the Philadelphia and Reading Railway, between Bridgeport and Philadelphia, is mainly on the west side of the Schuylkill River, is it not?—A. Yes, sir.

Q. And the coals coming to Philadelphia follow that line from Bridgeport to that city, is that right?—A. Yes, sir.

Q. The coals going to New York, after they leave Bridgeport, go down on the Reading line, on the east side of the Schuylkill River, to Plymouth Junction, thence through or near Jenkintown, thence on to Port Reading Junction, near Bound Brook, and thence to Port Reading, on the waters of New York Harbor?—A. Yes, sir.

Q. Where are the coals mined in the vicinity of Tamaqua, which are shipped either to Philadelphia or to New York over the lines of the Philadelphia and Reading Railway, gathered to be put in the trains?—A. At Tamaqua scales.

Q. Is that at Tamaqua?—A. Yes, sir.

Q. Are the coals which are mined and shipped over the lines of the Philadelphia and Reading Railway Company north of Tamaqua gathered at Tamaqua, too?—A. I can not answer that question. That is a matter for the railroad.

Q. There are tracks belonging to the Philadelphia and Reading Railway Company leading from Tamaqua straight down to Read-

ing?—A. I believe there are, although I am not qualified to answer that question.

Q. Do you have anything to do with settling the freights for coals shipped by The Philadelphia and Reading Coal and Iron Company over the lines of the Philadelphia and Reading Railway Company?—A. No, sir.

Q. Who looks after that matter?—A. I imagine our accounting department.

Q. Do you know how those freights are paid?—A. No, sir.

Q. Do you make any distinction in your sales between coals that are mined by The Philadelphia and Reading Coal and Iron Company and those which it purchases after they are mined by others?—A. No, sir.

Q. So far as sales are concerned, and so far as your department is concerned, you do not undertake to discriminate between coals purchased and coals mined by your company?—A. No, sir.

Q. Do you mail out this circular that you issue each month to the sales agents of other coal companies?—A. Yes, sir.

Q. What coal companies do you send them to?—A. As far as I can remember, all of them. We have a regular mailing list, and I think their names are included.

Q. How many names are on that mailing list?—A. Three to five hundred.

Q. You mail those circulars to all of those people?—A. To all of those people. Every party who buys coal from us gets a circular.

Q. That was not my question. I want to know whether you mail those circulars to other companies who are in the business of mining and selling coal?—A. Yes, sir; I answered that.

Q. How many of such companies are there to whom you mail those circulars?—A. To all of them; probably 15. By that I mean not only the large producing companies, but the individuals as well.

Q. Do you receive the price circulars that are issued from month to month by other coal-producing and selling companies?—A. I think they returned the courtesy, as far as I remember.

(At 1.30 o'clock p. m. a recess was taken until 2.30 p. m.)

The witness produced general price circulars of The Philadelphia and Reading Coal and Iron Company, commencing April 2, 1900, down to October 1, 1908. Such of the same, or the information contained therein, as the Government may be advised, will be introduced into the record as Government exhibits.

Cross-examination by Judge CAMPBELL:

Q. When did you first enter into the service of The Philadelphia and Reading Railroad Company or The Philadelphia and Reading Coal and Iron Company?—A. As near as I can remember I entered the service of the Reading Railroad Company in September, 1880.

Q. In what branch of the service were you engaged?—A. At the shipping agent's office at Port Richmond, Philadelphia, as clerk.

Q. How long did you continue there?—A. Two years.

Q. Up until 1902?—A. Until 1902; yes, sir; I was then transferred to Mr. Thomas M. Richards' office at Fourth street. Thomas M. Richards was general coal agent of The Philadelphia and Reading Coal and Iron Company.

Q. You remained in the service there under him at his offices in Philadelphia until when?—A. Until March 1, 1904, when I was transferred to New York as the New York sales agent.

Q. You were the sales agent at New York, with your office at 143 Liberty street, from 1904 until when?—A. July 1, 1907.

Q. That is the time you mentioned in your answer in chief?—A. Yes; since that time I have been general coal agent, with offices at the Terminal Building, Philadelphia.

Q. Since the death of Mr. Richards, lately, you have been in sole charge of the general sales of all the coals produced and purchased by The Philadelphia and Reading Coal and Iron Company in all parts of the country where you have markets?—A. Yes, sir.

Q. From 1902 until now, therefore, you were acquainted with the methods of your department in fixing the prices of the coal to be sold?—A. To a certain extent; yes.

Q. And of the motives of the management in fixing them?—A. Yes, sir.

Q. Subjects of constant discussion between yourself and your superiors?—A. Yes, sir.

Q. From that time until now?—A. Yes, sir; until the present time.

(Adjourned to meet at room 320, Post Office Building, Philadelphia, Pa., on Tuesday, November 17, 1908, at 10.30 a. m.)

It is by request of the solicitors for the United States it is ordered by the examiner that the taking of testimony on the part of the United States be proceeded with at the United States marshal's office, Scranton, Pa., on Tuesday, November 17, 1908, at 10 o'clock a. m., instead of at Philadelphia on the same date, as provided in the order enlarging the session held on October 29, 1908. The notice of this change has been given to the solicitors for the defendants.

Met pursuant to notice at Scranton, Pa., Tuesday, November 17, 1908, at 10 a. m.

Present: The Examiner; E. Carroll Todd, esq., for the United States; and H. H. Campbell, esq., Solicitor West, esq., Forest Warren, esq., H. H. Schuyenkottan, esq., R. W. de Forest, esq., J. H. Warren, esq., James E. Ware, esq., Mr. Wallis, and Mr. Watson, for various defendants.

WILLIAM H. RICHMOND, a witness for the plaintiff, having been duly sworn, was examined on behalf of the plaintiff, and testified as follows:

Direct examination by Mr. Todd:

Q. Will you give your present address and occupation?—A. My residence is Scranton, 1825 North Main avenue.

Q. And your occupation? You are a retired anthracite operator?—A. A retired coal operator.

Q. We want to go very briefly into the development of the transportation agencies in the coal fields, in what form they began and how they developed. In the earlier stages of the industry what were the transportation agencies?—A. The earliest that I am acquainted with was the Delaware and Hudson Canal Company.

Q. Even before that, I suppose, in the historical development, the coal was transported from the mines by wagon and down the rivers, was it?—A. There may have been something done of that kind, but a very small amount, I judge.

Q. The first practical transportation agency was the Delaware and Hudson Canal?—A. Yes, sir.

Q. And other canals, I suppose, after the Delaware and Hudson?—A. The North Branch Canal came after that.

Q. After the canals the railroads came, did they not?—A. The Erie Railroad was the first railroad we have any history of up in this country.

Q. Do you recall when the Erie was built in?—A. The Erie reached Great Bend about 1849 or 1850.

Q. Was that the title of it in those days, the Erie Railroad?—A. I am not positive about that.

Q. That is what it was known by generally?—A. I am not so positive about that. The title has been changed a number of times, but it was what was known as the Erie Railroad.

Q. Do you recall now in their order the other railroads as they entered the anthracite regions?—A. The next railroad we had was from this point up to Great Bend, called the Leggett's Creek road, I think.

Mr. WARREN. It is now the northern division of the Lackawanna.

The WITNESS. That was completed in about 1851, I think.

By Mr. TOWN:

Q. That is now a part of the Delaware, Lackawanna and Western Railroad?—A. Yes, sir.

Q. Do you remember what was the next railroad after the Leggett's Creek road?—A. We had a road from what is now Peckville—the next road was the road east, I think, built through to Washington, N. J., and connected with the Morris and Essex road. That was completed in 1856.

By Mr. WARREN:

Q. That was a part of the Lackawanna?—A. Yes: that was a part of the Lackawanna.

By Mr. TOWN:

Q. Without going into further detail, can you name as of, say, 1880, the railroads which were then serving the anthracite fields?—A. The Delaware, Lackawanna and Western, and the Erie Railroad, through the Pennsylvania Coal Company, served the Lackawanna field at that time.

Q. I mean any field.

Mr. WARREN. I want to suggest to you that Mr. Richmond is speaking now entirely of what you call the northern field, which is a very small part of the anthracite field. The fact is, Mr. Richmond is answering specifically as to this extreme northern end.

By Mr. TODD:

Q. When I asked you what railroads were serving the anthracite fields in 1880, I did not mean the northern field exclusively, but all of them, so far as you have information respecting them.—A. The Lehigh Valley was doing so and the New Jersey Central; the Reading Railroad, I think. I do not recall now any others particularly.

Q. Did the Pennsylvania?—A. Yes; the Pennsylvania Railroad; that is true.

Q. And the Jersey Central, what you call the Jersey Central was, and the Lehigh and Susquehanna Railroad, which the Jersey Central leased, was it not?—A. I think so.

Q. What railroads were built into the anthracite region subsequent to 1880; do you recall?—A. The New York, Ontario and Western, completed in 1890—a branch of the New York, Ontario and Western, completed in 1890.

Q. When was the New York, Susquehanna and Western built?—A. I do not recall the date of that, but it must have been before 1890, as I recollect.

Q. Before 1890?—A. I think so.

Q. But do you recollect whether it was after 1880?—A. I should think it was after 1880.

Q. The practice exists in the anthracite trade of the railroads, as in the case of the Lackawanna, or of the coal companies whose stock is owned by the railroads, buying coal from other operators for a certain percentage of the tide-water price. I say that practice exists at the present time. Do you know when that originated?—A. The last change was made since the strike of 1900.

Q. What I mean is, do you know when the general practice first originated?—A. I can not say that I can give the exact date about that. I commenced mining in 1860, on a schedule of prices; made partial arrangements to do so with the Delaware and Hudson Company. Before I got fairly at mining the company demanded that operators should put up coal breakers and break up the coal and sort it, and we had to take the best price the company would give us. We had agreed on a price for coals as they were taken from the mines, but that was changed when it was determined that the independent coal operators must put the coal through breakers and sort it out. The company made prices for us, which we took, and those prices were changed after the war came on and labor was costing more, and the companies put up the price to what they thought would cover the extra expenses over the original arrangement, and we took just what we could get at that time.

Q. Do you mean that, beginning in the early sixties, so far as your operation was concerned, at any rate, that the railroads on which your collieries were located, began at that time buying the coal from you at the mines?—A. Yes.

Q. Was the price they paid at that time a specific price per ton, or was it a percentage or proportion of tide-water price?—A. It was a specific price per ton.

Q. A specific price per ton?—A. Yes. We had 50 cents for chestnut coal, 90 cents for grate, $1.05 for egg coal, and $1.20, or $1.25, for stove, I think, about, at that time.

Q. That was in the early sixties?—A. That was in the early sixties, up to the time the war affected the prices, and then the companies—that is, the Delaware and Hudson Company, to which I was delivering coal, and I think the other companies here—advanced prices to accord with what they thought the extra expense incurred by our labor over what had been previously paid amounted to.

Q. Some time after that was not the price arrangement changed and, instead of your receiving a specific sum per ton, you received a certain percentage of the tide-water price?—A. Yes.

Q. Do you recall when that change took place?—A. That was 1880 or after 1880.

Q. Not until after 1880?—A. No; I think not. I discontinued shipping on the Delaware and Hudson in 1883 in consequence of the coal breaker being burned. I built another colliery up in the second ward of Scranton, what is called the Bull's Head, and shipped on the Delaware, Lackawanna and Western road from 1884 to 1889, and they gave us a certain percentage. I can not recall just how much, but my impression is that it was less than 50 per cent.

Q. Less than 50 per cent?—A. That is my impression.

Q. In 1880?—A. From 1884 to 1889.

Q. You do not think that the practice of giving a percentage of the tide-water price began earlier than 1880?—A. I can not say about that. It may have been. I had no personal knowledge of that, because I was taking just what I could get from The Delaware and Hudson Canal Company.

Q. They were giving you a specific sum?—A. We started on specific prices, as I have named to you, and, as the wages went up, the price of labor and other things went up, the company put up their prices, they claimed, enough to cover the extra cost to us in mining coal. Sometimes we got enough, sometimes we did not. But when the wages came down again, we had to come down with the price of coal too.

Q. Do you recall when the practice of the railroads or the railroad coal companies buying the coal at the mines for a percentage of the tide-water price first became in general vogue?—A. As I say, I can not say definitely, but I commenced mining and shipping on the Delaware, Lackawanna and Western in 1884, and my impression is that they gave us 50 per cent. If we shipped our own coal, or bought it, they gave us certain prices. I have forgotten the prices exactly.

Q. Do you know whether that practice was general at that time or was limited to you?—A. No, I do not know that it was general.

Q. You only know what your own particular business was?—A. No, I think the Delaware and Hudson did not have any rates of percentage at that time, or for sometime after. My impression is that the Lackawanna and Western did give their operators a certain percentage, and I think it was 50 per cent.

Q. All of them?—A. That is my impression.

Q. You are not sure whether it was 50 per cent or less?—A. No, I am not sure about that matter; but they bought coal from the operators also, giving them a certain price. I do not recall just how that was arranged, but I think it was on the basis of what it sold for in New York.

Q. In the last answer, I would suggest that possibly you did not exactly grasp my first question. Have you been making a distinction between the practice of transporting coal to market for a certain price, a certain percentage of the price, and buying the coal at the mines for a certain percentage of the price?—A. I think that arrangement was in force as early as 1884, when I commenced shipping on the Delaware, Lackawanna and Western.

Q. Let us take your specific case. Did you ship your coal at that time over the Lackawanna and Western and pay them, as freight, a certain percentage of the price, or did you sell your coal to the Delaware, Lackawanna and Western at the mines for a certain percentage of the price?—A. I shipped some coal by the Lackawanna and Western and paid the regular freight rates to New York. Other portions of the coal I sold them and took the price that they were paying operators.

Q. Do you recall whether the entrance of the New York, Susquehanna and Western, or the projection of that road into the anthracite regions resulted in an increased percentage being paid to the operators?—A. I do not recall the date exactly, but I should think it was in 1884, 1885, or 1886.

Q. My question was whether the projection of that road into the anthracite regions resulted in increasing the percentage which the operators were theretofore getting from the railroads then in existence?—A. Yes, sir; it did.

Q. Do you recall from what percentage to what percentage?—A. My impression is it was about 55 per cent, but I am not sure about that.

Q. Your impression is that the New York, Susquehanna and Western offered 55 per cent?—A. Yes, sir.

Q. And that the other railroads followed suit?—A. I can not say directly about that, whether they did immediately or not.

Q. But they did after a time?—A. My impression is they did, but I am not so sure about it.

Q. That is your recollection?—A. Yes.

Q. When the New York, Ontario and Western Railroad was projected into the anthracite field, did that again lead to an increase in

the percentage which the railroads, or the railroad coal companies, gave the operators?—A. Yes, sir. That was one of the conditions that enabled them to build the branch in here, I believe—was that they could get promises from the coal operators to put coal on their road.

Q. Do you know what percentage they offered?—A. I think they offered 60 per cent.

Q. And then immediately, or after a time, the other roads had to make the same offer, did they not?—A. My impression is they did; yes, sir. I made the first contract; in other words, the first promise to put coal on the branch of the Ontario and Western by reason of their promise to give the 60 per cent for some coal I was opening in this region at that time.

Q. What railroads were your collieries located on?—A. My first colliery——

Q. What was that?—A. In 1860, at Dickson City, located on the line of the Delaware and Hudson.

Q. Any others?—A. No; no other on the road at that time, except by building a 4-mile road to get down here to this point.

Q. Did you ever do that?—A. No, sir; I never did.

Q. So that the Delaware and Hudson Company was the only transportation line that ever reached that first colliery?—A. Yes, sir.

Q. Take the next colliery you opened?—A. That was built on the line of the Delaware, Lackawanna and Western.

Q. Did any other railroad reach that besides the Delaware, Lackawanna and Western?—A. No, sir.

Q. Did you ever open any other collieries?—A. I opened one in 1890, and shipped on the Ontario and Western then.

Q. Was that on any other road besides the Ontario and Western?—A. That colliery was located on the same ground where my first one was built, in 1860.

Q. But in the meantime the Ontario and Western had built in there?—A. Yes; built in a branch; and I transported the coal from the shaft, about a mile to my colliery. There I could reach both the Delaware and Hudson and the Ontario and Western; and, at that time, could reach the Delaware, Lackawanna and Western by going half a mile, if I wanted to.

Q. Why did you prefer to sell your coal to the one or the other of the transportation lines rather than market it yourself?—A. Our education from the first, perhaps; commencing first with selling it to the companies when we had no way to ship it. On the Delaware and Hudson we could not ship it; the rates were such that we could not ship it to anybody, and we were educated that way; and, so far as I was concerned, I thought it was less trouble than it was to ship it and keep an agent in New York or other places to dispose of it.

Q. When you say you were educated that way, by whom do you mean you were educated?—A. Educated from the practice, the custom, which we followed from 1860 up to 1883. At that time my colliery burned down, and then afterwards, as I have said, I built a

colliery on the line of the western division of the Delaware, Lackawanna and Western in 1884, and shipped on that from 1884 to 1889. I sent a portion of the coals to an agent in New York to sell, and the larger portion of it I sold direct to the company, being less trouble.

Q. It was then the custom, even in those early days, for operators to sell to the transportation lines, was it not?—A. Yes, sir; we did that from the first in this region.

Q. You do not know about the conditions in the other regions?—A. Not especially; I do not remember. It is my impression that perhaps the Delaware, Lackawanna and Western did transport coal after 1856 for coal operators, but I am not sure about that. They did so as late as 1880 or 1884.

Q. Your contract with the Ontario and Western was on the 60 per cent basis you said, did you not?—A. Yes, sir.

Q. Did that contract have any particular period to run?—A. The contract was conditional, that if any other parties gave a better rate, we were to have it.

Q. Under the operation of that clause, did you subsequently get a better rate?—A. I do not think the rate was changed while I was mining. I sold my coal interests to the Ontario and Western in 1899, and I think the rate was not changed while I was mining, from 1890 up to 1899.

Q. Do you recall whether that contract of yours was for an indefinite period, for the life of the mines, or for a particular period?—A. No; it was for the life of the coal that I controlled.

Q. Do you know whether the independent anthracite operators supported the projected New York, Susquehanna and Western and New York, Ontario and Western railroads?—A. They did, to a considerable extent. The Ontario and Western and I believe the other road, too, were justified in coming in with their roads or branches by reason of the promise of the coal operators mainly.

Q. So the coal operators at those times thought that they wanted additional railroads?—A. Yes, sir.

Q. Do you know why?—A. I suppose they had thought they would be able to get better accommodations and better service, about getting coal to market.

Q. And better rates?—A. Yes; I judge so.

Q. Did they not get them?—A. Yes; I think they did.

Cross-examination by Mr. WARREN:

Q. You reside here in the city of Scranton, you told Mr. Todd?—A. I have resided here since 1874.

Q. Prior to that time you resided in the same place, but it was not within the city limits?—A. No, sir; I did not. I resided at Carbondale.

Q. Which is 16 miles north of here?—A. Yes, sir.

Q. You have resided in this end of Lackawanna County what length of time, covering all your residence?—A. In Lackawanna County and Luzerne County since 1845. Three years previous to that I resided in Wayne County.

Q. When you speak of Lackawanna and Luzerne counties since 1845, you speak of Luzerne because we used to be a part of Luzerne?—A. Yes, sir.

Q. But you have resided in this same territory, that is, Scranton and north, since 1845?—A. Yes, sir.

Q. You have been asked about the introduction into this region of transportation facilities, of railroads, and you have spoken very accurately of the construction of the northern division of the Lackawanna, away back in the early fifties, which ran through this Lackawanna Valley to Great Bend on the Susquehanna River, there connecting with the Erie Railway Company. That was the first method of getting out of this valley by railroad, was it not?—A. Except by the gravity road from Carbondale to Honesdale.

Q. You do recall that prior to that the Delaware and Hudson had constructed the gravity road, as it was called, over the mountain from Carbondale to Honesdale?—A. Yes, sir.

Q. Do you remember when they constructed it to Peckville or Olyphant? I believe it reached Olyphant.—A. The road was completed from Carbondale to Honesdale in 1829, and the first coal shipped, 7,000 tons, in the fall of 1829. Then there was no other coal shipped out of the valley until the western division of the Delaware, Lackawanna and Western was built in 1851.

Q. Which is the road you speak of from Scranton to Great Bend?—A. Yes, sir.

Q. But I am asking you if you remember when the Delaware and Hudson continued the road from Carbondale down to Olyphant?—A. That was completed in 1857, down to Archbald.

Q. But it ultimately got down to Olyphant?—A. It came down to Olyphant in 1858.

Q. So that several years before they built their locomotive railroad, which now runs from Scranton to Carbondale, they used the gravity system down as far as Olyphant?—A. Yes; and down as far as Providence. The road was completed down there in the early part of 1860.

Q. But from Olyphant down they ran it down by an engine, a small narrow-gauge road?—A. Yes; the same gauge as the gravity track.

Q. In 1856 the Lackawanna constructed their southern division from Scranton to Newhampton Junction, did they not, passing Washington, this place you spoke of, connecting there with the Morris and Essex and going on to Newhampton Junction, some 10 or 12 miles farther east, or southeast, and there connecting with the Central Railroad of New Jersey. Is not that right?—A. Yes.

Q. That, then, was the situation in this valley at the time of the opening of the war, as far as railroads were concerned?—A. With the exception of the gravity road.

Q. You have spoken of that. I am including that. Add to that that the Pennsylvania Coal Company had constructed, before that

at any rate, a gravity road which ran from Pittston, 9 miles below us, crossing over the mountains to Hawley.—A. Yes, sir.

Q. There connecting with the branch which joined the Erie Railroad with Lackawaxen, west of Port Jervis?—A. Yes, sir.

Q. The Reading Railroad, of which you spoke, never built, so far as you know, did they, either into the Wyoming region, as we call it, or the then northern field, or the Lehigh field?—A. I think not, so far as I recall.

Q. It has been suggested that the Pennsylvania Coal Company for several years after they built the gravity road, the eastern terminus of which was Hawley, that they shipped for several years by the Delaware and Hudson Canal from that point.—A. Yes.

Q. And that the Erie Railroad did not build from Lackawaxen, on their main line, to Hawley, coming in this direction, until some years after that.—A. Yes; quite a number of years.

Q. The Lehigh Valley approaches this northern field at its nearest point to it at Pittston, does it not?—A. So I understand.

Q. The Lehigh and Susquehanna, which Mr. Todd spoke of, which is really known here as the Central Railroad of New Jersey, which leases it and operates it—that stopped in those early years at Wilkes-Barre, did it not?—A. I think so.

Q. The Delaware and Hudson several years after the time that you have spoken of built a standard-gauge railroad from Carbondale, coming down to Scranton and on through down to Wilkes-Barre, did it not?—A. Yes, sir.

Q. That was in the late sixties or about 1870?—A. About 1871. It was built as far as this town in 1871, and, I think, continued to Wilkes-Barre at that time. I am not quite sure.

Q. For several years after that the Central Railroad of New Jersey had the right to operate that part of the Delaware and Hudson which was from Green Ridge to Wilkes-Barre. You remember that, do you not?—A. I think so; yes.

Q. And it is only in recent years that they built their road which leaves the Delaware and Hudson tracks down near Minooka, and they operate a matter of 2 or 3 miles up to a point here on the west side of the Lackawanna River, where their station now is?—A. Yes, sir.

Q. That being the situation as to railroads in this northern field, and your testimony, so far as you have personal knowledge of mining experiences, is confined to this Wyoming field, as it is called, is it not?—A. Yes, sir.

Q. And as a matter of fact it is confined, is it not, rather to this section of the Wyoming field which represents Lackawanna County north of Scranton, or, we will say, of Scranton and north of Scranton?—A. Yes; more particularly.

Q. That is to say, you never personally had any investments or were associated with the operation of coal companies south of Scranton?—A. No, sir.

Q. Do you also recall that about 1870, or perhaps a few years before that, the Erie Railway Company, or by whatever name it was known, what we ordinarily speak of as the Erie Railway, built a branch from near Susquehanna Depot, on their main line, coming down southwesterly to Carbondale, known as the Jefferson division?—A. Yes, sir.

Q. Am I not right in fixing that time as the latter years of the sixties?—A. Yes; it was some time between 1860 and 1870. I can not give the date of that.

Q. The New York, Ontario and Western built into this region in 1890, as you said?—A. Yes.

Q. The fact is that they built from some place on their main line, in the State of New York, coming westerly or southwesterly into this valley, and the farthest south they have ever come is to the city of Scranton, is it not?—A. I think so.

Q. In other words, the only way they have tapped the anthracite region, speaking of them generally, is from this extreme end of it, from Scranton northeasterly toward New York City?—A. Yes, sir.

Q. Which only represents the northern half of Lackawanna County?—A. Yes, sir.

Q. The New York, Susquehanna and Western came into this region about 1880, as you say. I think that is right, it was about that time?—A. Yes.

Q. Do you not recall that they, or those who were interested in the construction of that road, acquired the old Pennsylvania Anthracite Coal Company property?—A. I think so.

Q. Which was down below Scranton a few miles, in the vicinity of Minooka, and Old Forge, as we now call it, and Rendom and Taylor. Is that not right?—A. I think that is right.

Q. The old Elisha Corey properties, as we commonly speak of them there?—A. Yes, sir.

Q. Do you not remember that it was a very large acreage of land, that they had several operations and nearly a thousand acres of coal land there?—A. I do not recall just now about that.

Q. Let me see if I can not refresh your recollection. Do you not remember that there were what were known as the East Side and West Side properties of that Pennsylvania Anthracite Coal Company?—A. Yes, sir; I recall that.

Q. One being east of the Lackawanna River and one west. The New York, Susquehanna and Western did not build a railroad in here at that time, did they?—A. I do not think they did.

Q. Do you not remember that what they did was to extend their road, then running through the city of New York to what is known as Gravel Place, a few miles this side of Stroudsburg, and at the foot of the Pocono Mountains, and then make a contract of carriage with the Lackawanna, which had a road over the Pocono Mountains into this valley? Is not that right?—A. That was the first arrangement.

Q. Then they, as you remember, went to gentlemen hereabouts—having acquired this large coal interest known as the Pennsylvania anthracite, they went to other gentlemen hereabouts owning the coal lands, or having leases of coal lands, and made arrangements with them by which they financed, in whole or in part, the construction of their collieries; that is, advanced money to sink the shafts, build the breakers, and develop the mines; is not that right?—A. I think that was done.

Q. In consideration for which they agreed to take their coal at the basis which was then known as 50 per cent of the average of tide prices?—A. I think that was so.

Q. And do you not remember that the average that was then taken was the average of the prices received by certain of the companies selling coal in New York? That is to say, for instance, they would agree to take the average of the price that the Delaware and Hudson and Lackawanna sold in connection with contracts?—A. I do not recall definitely about that.

Q. You do not recall definitely about those facts?—A. No.

Q. You do remember, do you not, that they built a railroad known as the Winton Branch, which connected with the Lackawanna at Greenville, over here about 6 miles east of Scranton, skirting the ridge of the mountains, and getting into the northern part of the valley here at the end of it, by constructing that road of 10 or 12 miles in length down to the collieries which they had assisted by loaning money to those gentlemen to open up and develop?—A. Yes, sir; I remember that.

Q. As, for instance, the Winton colliery and the Lackawanna?—A. Yes, sir.

Q. They also arranged, by some trackage arrangements with other transporting companies, to get at their own fields, known as the Pennsylvania anthracite properties, a little south of Scranton?—A. Yes.

Q. Before we take up the Ontario and Western, and your arrangements with them, I want to ask you a few questions about the early relations between the individual operators, so called, and the railroads, so called. You have spoken of opening mines here as early as 1860?—A. Yes, sir.

Q. That was before the introduction generally of what we now know as breaker preparation, was it not?—A. When I first arranged to sell coal to the Delaware and Hudson Company, in the winter of 1860, there were no coal breakers on the Delaware and Hudson road, except one which was built at Carbondale the year before.

Q. Which was their own operation?—A. Which was their own operation.

Q. When you first started, then, in the early beginnings of the preparation of coal, there was very little construction in the way of a breaker, if any?—A. They were not so expensive as have been built since, by any means, but the first breaker I built I could ship 500 or 600 tons a day by it.

Q. But you shipped in accordance with the methods and the appliances then in vogue in that region?—A. Yes.

Q. Which would not represent at all modern methods and appliances by way of preparation?—A. No, sir.

Q. Coal, as it comes from the mine up to the tipple or up to the surface, is raw material, is it not, anthracite coal?—A. Yes, sir.

Q. In other words, coal, as we speak of it as a merchantable commodity, is the result of manufacturing the raw material as it comes from the mines; is not that right?—A. When you talk about manufacturing it, you manufacture it by putting it through a coal breaker and breaking it up and sorting it.

Q. But you do more than that. You take the raw material which comes to the surface, and has attached to it a proportion of impurities, slate, bone, rock, and so forth, and you have to detach those from the pieces, even though in size they may be right at times, in order to prepare and manufacture the raw material into coal of the various marketable sizes. Is not that right?—A. That is right.

Q. So that, speaking broadly, it is truthful to say, is it not, that anthracite coal is sold in the markets of the United States as a manufactured commodity?—A. In that sense it is.

Q. That is, anthracite coal could not be sold as bituminous is, by run of the mine?—A. Not at the present date, but up to 1860 it was all sold that way, pretty much all.

Q. That is because in those days they did not attempt to convert into a merchantable commodity the sizes which they now do convert it into and sell; and is it not true that in those days lump coal, so called, was the larger proportion of the output of the mines?—A. It was in that early day; yes, sir.

Q. Therefore only veins then could be handled, or rather the product of veins could only be handled, which represented the purest and the cleanest coal?—A. That was necessary, in order to sell it.

Q. You have spoken of a basis of contract between you and the Delaware and Hudson in the early days, in connection with which you have mentioned certain prices received for certain sizes, and then you say that when the war came on, the prices of labor increasing, and material, the company added to the theretofore prices that which they thought would represent the increased labor cost. Do you not recall that in the years following the war the coal that was sold in this particular part of the anthracite region, which is the only part I am now talking about in my examination of you, was what was sold upon what was known as the labor-basis contract?—A. That is my impression, that that was what was talked at that time.

Q. In other words, a fixed figure was agreed upon between the individual operator and the vendee of the coal company, the railroad company, if you please, and then it was provided that if labor went up a certain number of cents per ton were to be added, and if labor went down a certain number of cents per ton were to be deducted. Do you not recall that?—A. In my case, up to 1883, from 1860 up to 1883, we had no understanding except we had to take just what

the Delaware and Hudson Canal Company was disposed to give us, whether it went up or went down, and they claimed they based our prices upon the cost of labor. That was what they used to talk to us.

Q. You have given us your idea, however, of things that did not have to do with your own operations, and so I want to ask you whether you do not recall that the coal was sold in this northern field, or this part of it, in what is now Lackawanna County, by individuals to the company in the early days, upon what was generally spoken of in the trade hereabouts as the labor basis, which was a basis such as I have indicated? For instance, do you not recall a basis of settlements on a fixed figure per ton for the coal delivered, with provisions that the operator, the man running the colliery, was to be paid an increase of 8½ cents a ton for every 5 cents per ton of increase paid to the miner in wages, and a decrease of 8½ cents per ton for every 5 cents decrease in wages paid to the miner? Do you not remember that that was the customary manner of settlement in that part of the field in those years, in the early seventies?—A. I think it was.

Q. In subsequent years you formed a corporation of the collieries with which you were identified, did you not?—A. I commenced mining in Dickson City in 1860 under the name of Richmond & Co. In 1863 I got a special charter from the legislature for the Elk Hill Coal Company. After that there were two subsequent changes, and it was made the Elk Hill Coal and Iron Company.

Q. In other words, the name of the company was changed?—A. Yes, sir.

Q. It was under the name of the Elk Hill Coal and Iron Company that you constructed, opened up, the property which you sold subsequently to the Ontario and Western, as you say; is not that right?—A. Yes.

Q. Just before we speak of that, I understood you to say that from 1884 to 1889, or about that time, you sold a part of the coal that you manufactured at the colliery of the Elk Hill Coal and Iron Company to the Delaware, Lackawanna and Western?—A. Yes, sir.

Q. They paying you, as you now recall, to the best of your recollection, 50 per cent of tide-water prices for it?—A. I think that was about the rate. I am not so definite about that.

Q. Can you tell me the average price of the coal you had for which you were paid 50 per cent of tide?—A. It is my impression it was above pea coal; sales of all sizes above pea coal.

Q. You are now speaking of sizes, but can you not recall whether it was not the average prices received at tide by certain designated companies who sold coal at tide who were named in your contract?—A. I do not know as there was in my contract any such provision as that.

Q. I think it was in fact, but perhaps you do not recall it. Then, you say that some of the product of your breaker there you sold yourself.—A. Yes.

Q. Not at tide, did you?—A. We sent it to tide and sold it there; sold it through an agent in New York.

Q. In 1889 or 1890, somewhere along there, and about the time the Ontario and Western came in, did they not advance moneys to you to develop your property, enlarge your breakers—or perhaps build another; I am not familiar with the facts—but at any rate, to assist you in the development of your mining operations?—A. My first arrangement with the Ontario and Western Company, I promised their Mr. Sturges, who was connected with the building of the branch, promised to give them 50,000 tons a year from the coal I was mining on the Carter estate. I do not just remember how long after I contracted to give them the whole of the coal. They had on that property 30 or 40 acres of land, and they agreed to loan me some money for development.

Q. Is not this the fact, that what was done was this: That when you sold, whatever your deal was, that it was the stock of the Elk Hill Coal and Iron Company that you sold to those who were associated with the Ontario and Western? Was not that the straight fact about the negotiation and the sale?—A. The negotiations were these——

Q. Just a minute, please. You said to Mr. Todd that you sold your collieries to the Ontario and Western Railroad. I think you are mistaken in that. Is it not a fact that what you did was to sell the stock of the Elk Hill Coal and Iron Company to certain gentlemen, or a certain road, or somebody at any rate?—A. The arrangement was made to turn over a portion of my coal interests to the Ontario and Western road, or the company, and previous to that the Elk Hill Coal and Iron Company transferred to me personally certain properties at Dickson City, 40 or 50 acres of land, the colliery, and the appurtenances, and my arrangement was to let the Ontario and Western people occupy that colliery and the roads as they lay at the time, until this coal was mined out of this property on the Carter estate; and in doing that I transferred the shares of the Elk Hill Coal and Iron Company to the Ontario and Western people.

Q. So that the collieries which you used to control under the ownership of the Elk Hill Coal and Iron Company are now controlled by the Elk Hill Coal and Iron Company? In other words, that company is still in existence, is it not?—A. Yes; the Elk Hill Coal and Iron Company.

Q. The Elk Hill Coal and Iron Company to-day own the collieries which you, having the controlling interest in the Elk Hill Coal and Iron Company, used to own?—A. Let me explain why. I owned a colliery 5 miles above Carbondale on leased land. I owned the colliery and improvements, 40 or 50 dwelling houses and store, and so forth. That property was in the name of the Elk Hill Coal and Iron Company, and, when I arranged to sell certain interests to the Ontario and Western people, the Elk Hill Coal and Iron Company then transferred to me the forty-odd acres of land, lying about Scranton, and the colliery which was upon it and the appurtenances con-

there were a good many in those days—and they came to me and engaged me to get what tonnage I could. I secured a number of contracts for them, and also became a small owner of the Lackawanna Coal Company, at Olyphant, in this county. That was my first connection, practically, with the anthracite coal business. I remained with that company as a stockholder and director until about ten years ago, when it was sold to The Temple Iron Company. My next interest, I think, was with the New York and Scranton Coal Company, of which I was president, and which was started under these conditions: About twenty years ago, eighteen or twenty years ago, the Ontario and Western people engaged me on the same general basis—to endeavor to secure tonnage for their proposed new road; and, by the way, Mr. Richmond was my first capture. As a part of their work in securing tonnage, we built the New York and Scranton colliery, called the Ontario colliery, near Winton, in this county. That was operated for a number of years by us and finally sold to the Elk Hill Coal and Iron Company, approximately, I should think, about eight or ten years ago. I am just estimating that.

Q. After that company was sold by Mr. Richmond to the Ontario and Western?—A. No, sir.

Q. Before that?—A. I am unable to give exact dates, but I think our sale of the New York and Scranton Coal Company was to some interest connected with the Ontario and Western people, away back of Mr. Richmond's sale of his larger interests. That is my recollection. I am unable, without reference to papers, to give the exact date. I should have said that prior to this I was also a small stockholder, a one-fifth interest, in the Dolph Coal Company, which was built largely with money furnished by the New York, Susquehanna and Western under the original arrangement. I have omitted that. That colliery still remains under its old ownership to this day. We still own and operate the Dolph Coal Company, and ship this coal where we please, the Erie getting most of it, because it seems to be to our advantage. That was my second coal interest, the New York and Scranton being the third. As the result of the coming in of the New York, Ontario and Western, and partly with money advanced by them, the Johnson colliery was—not started, because it had been started by Mr. Jermyn—but greatly enlarged and increased in tonnage and capacity. I was a small stockholder in that, I think a tenth interest.

Q. Where was that located?—A. I think that was located in Olyphant Valley, near Olyphant, Dickson City, this county. That colliery, or the stock of it, was sold, I think, to the Elk Hill Coal and Iron Company. It was some interest connected with the Ontario and Western I presume. The Clarence Coal Company is another one. That was back of Pittston, and was sold to the Hillside Coal and Iron Company two and a half years ago.

Q. When you say the Clarence Company was sold to the Hillside Coal and Iron Company, do you mean its entire capital stock?—

A. Yes; that was transferred. It carried with it the colliery as well. My latest interest—not only my latest, but most important—is down in the Reading country, at Minersville, Schuylkill County, the Pinehill Coal Company.

By Mr. WARREN:

Q. In what we call the Schuylkill region?—A. Schuylkill region; yes, sir. That I still own or control. I have had it nearly or quite ten years.

By Mr. TODD:

Q. That is the last, you say?—A. That is the last.

Q. At the time the New York, Susquehanna and Western was projected into the coal fields, can you enumerate the then existing railroads for us serving those regions? I mean what you might call the trunk lines, the long-haul lines.—A. The Delaware, Lackawanna and Western Railroad, up the valley as far as Jessup, in that direction, strictly to the Storrs colliery—that is not quite up to Jessup; the Lackawanna; the Delaware and Hudson; the Pennsylvania Coal Company.

Q. When you say the Pennsylvania Coal, you mean the railroad, do you not, which they control?—A. It was a gravity road from Hawley to Dunmore.

By Mr. WARREN:

Q. Down to Pittston, was it not?—A. Yes; Dunmore and Pittston.

By Mr. TODD:

Q. Did not the Pennsylvania Coal Company, either itself or the ruling stockholders in that company, own the stock of the Erie and Wyoming Valley Railroad?—A. Yes; afterwards they built the Erie and Wyoming Valley, abandoning the gravity railroad.

Q. The Erie and Wyoming Valley was a little later?—A. Yes, sir.

By Mr. WARREN:

Q. They used most of the right of way?—A. Yes, they built mostly on the old right of way.

By Mr. TODD:

Q. Where was that built from?—A. From Hawley to Pittston.

Q. What other railroads?—A. I think I have given virtually all. The New Jersey Central ran to Scranton, but they were never a large factor, as I remember, in this part of the valley.

By Mr. WARREN:

Q. Were they in any degree?—A. No, I do not remember a single colliery.

By Mr. TODD:

Q. The Jersey Central Railroad entered the Wyoming region at that time, did it not?—A. Yes, they came to Wilkes-Barre and came to Scranton over what was called the Union Railroad, as I understand it.

Q. You see, I am not speaking of the immediate vicinity of Scranton, but of the Wyoming region right now.—A. The Wyoming region we consider Wilkes-Barre and that region there, and we are so entirely separated from them that we do not include them. They are absolutely distinct and separate. For instance the Lehigh Valley has run, since I have been here, into what we call the Wyoming region.

Q. That is what I want to get at now. I want to get at what railroads, at the time the New York, Susquehanna and Western was projected, then served the Wyoming region as it is understood in the trade.—A. I think you ought to distinguish, if you will excuse me. For instance, the Lehigh Valley came to Wilkes-Barre and left the valley at Pittston, Pittston Junction, and followed the Susquehanna River.

Q. But it entered the Wyoming region?—A. It did not come here at all.

Q. But it entered what is generally embraced in the Wyoming region?—A. That is what they call the Wyoming. We call this the Lackawanna region, to distinguish it from the Wyoming.

Q. The Delaware, Lackawanna and Western you have already named as one of the roads?—A. Yes, sir.

Q. Did the Delaware and Hudson?—A. Yes, sir; I have named that, I think, or intended to.

Q. And the Jersey Central?—A. Yes, sir; they came up to Scranton, to Green Ridge.

Q. The Erie and Wyoming Valley had not been built at that time?—A. Not when the Susquehanna and Western came in.

Q. Do you recall any other roads?—A. No, sir; I do not. I think I have given them all.

Q. When the New York, Susquehanna and Western was projected, they offered to buy coal from the operators at a better rate, did they not, than the theretofore existing rate?—A. Yes, sir.

Q. What was the rate which they offered?—A. I think 50 per cent.

Q. What was the rate prevailing before their advent?—A. As far as there was a fixed rate, I think it was 40 to 45 per cent, but what are called the labor basis contracts were in existance at several of the collieries at that time. Of course, with respect to these latter, you can not say what the percentage was, because they were entirely on a different basis. The labor contracts had not been abandoned in the region when the Susquehanna and Western came in here.

Q. Could you estimate roughly what proportion of the tonnage was disposed of at that time on what are called the labor contracts?—A. No; I could not. My testimony would be of no value. I was a lawyer, not a coal man.

Q. All you know is that at that time some of the tonnage was disposed of under labor basis contracts and some was sold to the railroad companies at from 40 to 45 per cent of the tide-water prices?—A. Yes; nearer 40 than 45, I think.

Q. And the New York, Susquehanna, and Western offered 50 per cent?—A. Yes, sir; that is my recollection.

Q. Did they offer to transport the coal to market at New York Harbor for, say 50 per cent of the price there as freight, or did they buy the coal at the mines for 50 per cent? I know it does not make so much difference as a matter of practice, but as a matter of form, how was the transaction?—A. The operator loaded the coal at the mines and, in the following month he received 50 per cent—I am speaking now of course of the prepared sizes—50 per cent of his previous month's tonnage, 50 per cent of the selling price at New York for the previous month's tonnage.

Q. Do you know whether he knew whether he was selling his coal to the railroad at the mines or selling it at New York?—A. I think you ought to call one of those gentlemen.

Q. You made the contracts for the New York, Susquehanna and Western, did you not?—A. Many of them; the original ones, I made nearly all of them.

Q. What was your understanding of whether the transaction was a sale or a transportation contract?—A. Practically, it was a sale of the coal at the mines; that is what I considered it.

Q. For 50 per cent?—A. For 50 per cent.

Q. Of the prices prevailing——A. In New York. I do not know whether the four or five company basis that afterwards prevailed had been adopted yet or not. Of course, those contracts are in existence, plenty of them, and you can make out——

By Judge Moot:

Q. I understand that 50 per cent applied, as you say, to prepared sizes?—A. All prepared sizes; yes, sir.

By Mr. Todd:

Q. Were those contracts made in the name of The New York, Susquehanna and Western Railroad Company or in the name of some subsidiary company?—A. I think in the name of the company. That is my recollection. It is a good while ago.

Q. What was the effect upon the percentages which other roads were offering of this increased percentage which the New York, Susquehanna and Western offered?

(Objected to by Mr. Warren as incompetent.)

A. The result followed any way that the others gradually came up to the same price.

Q. Do you recall which was the first one?—A. No, sir.

Q. Was it the Erie?—A. I could not say.

Q. You do not recall?—A. No, sir; I do not recall.

Q. Coming to the New York, Ontario and Western, at what date did you say their branch was projected?—A. It would be eighteen or twenty years ago.

Q. I did not mean to ask you for the exact date, but just so as to fix it in some way. Eighteen or twenty years ago?—A. Yes, sir; about that.

Q. They offered to purchase coal from the operators, did they not?—A. On very much the same conditions as the other.

Q. Did they offer an additional percentage?—A. Yes, sir; they offered 60 per cent. The condition was that if I could secure for them—I presume I made the first preliminary arrangement for them—they would put it in here if I could secure a half million tons of coal, which I did secure for them. They said they would build in on that condition. If they came in here, they were to pay 60 per cent of the New York selling price for the coal. They also helped, I think, nearly every colliery that they got coal from very largely with money: some they built entirely.

Q. Do you recall whether they made out-and-out transportation contracts for 40 per cent of the tide-water price?—A. Would it not be fairer to get one of those contracts and let it speak for itself?

Q. If you remember, I do not think it would be unfair to anybody for you to state it.—A. It is a matter of deduction, but I would say, in a general way, that I considered them selling contracts to the company.

Q. All I was trying to get at was in which form the transaction was made.

Judge CAMPBELL. He has stated that his understanding of these contracts was that they were contracts for sale of the coal to the company.

By Mr. TODD:

Q. I am asking whether any of them were contracts specifically—I do not mean by inference, but specifically—for the transportation of the coal for a percentage of the contract price?—A. As I remember, the contracts, all that I drew—of course after they had gotten in here and had been here a few years I had other business and I withdrew from them, and the recent contracts have all been made through some one else. I am not connected with them in any way. I have five shares of the stock, I think. That is my only connection with them.

Q. The contracts you knew were made for the purchase of the coal of the operators for 60 per cent of the tide-water price?—A. That would be my construction of the contracts; yes, sir.

Q. Was it a fact that after the Ontario and Western made these contracts for the purchase of coal at 60 per cent that other railroads or railroad coal companies followed suit?—A. Yes, sir; generally, if not universally.

Q. Do any of the companies which you have stated that you are now connected with sell their coal to coal companies whose stock is owned by railroad companies, if you recall?—A. Do they sell directly?

Q. Sell their coal at the mines to coal companies whose stock is owned by railroad companies?—A. The Dolph Coal Company has practically no contract, because the coal contracted to the Hillside Company has been exhausted, so that the entire product of the Dolph Company, in which I am still interested, is free; but, as a matter of preference, we deliver it to the Hillside Coal Company, they paying

us just the same as though we had a regular contract, 65 per cent, prepared sizes.

Q. Your entire output which you sell goes to them, not under contract, but on the same price terms?—A. Yes; we do it because we think it is the best thing to do with our coal.

Q. What is the name of that colliery?—A. The Dolph colliery.

Q. That is the name of the colliery?—A. Yes, sir.

Q. That is one colliery?—A. Yes, sir. The Pinehill, which is the only other one I have any considerable interest in directly now, you could nearly divide it up into three parts, one-third of it derived from Reading lands, land which the Reading Company own.

By Judge CAMPBELL:

Q. The Reading Coal and Iron Company?—A. The Reading Coal and Iron Company. We speak of it that way. That is delivered to the Reading Railway Company under a 65 per cent contract.

Q. Under 65 per cent contract with The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir. I have the contract in my pocket. Another third, approximately, is delivered to the Pennsylvania Railroad Company. We have two railroads in there, and they pay us the same rate.

By Mr. TODD:

Q. The Pennsylvania Railroad, or the Susquehanna Coal Company?—A. I call it the Pennsylvania.

Judge CAMPBELL. It is important to preserve the distinction.

The WITNESS. If you will allow me to look at the papers. (Examining papers.) The contract which I call the Pennsylvania contract was made originally with Stickney & Conyngham, at Wilkes-Barre.

By Mr. WARREN:

Q. Were they not the sales agents of the Susquehanna Coal Company?—A. Yes, sir; they were. I know that to be a fact. I call it the Pennsylvania, because the Pennsylvania road takes our coal. The other is The Philadelphia and Reading Coal and Iron Company, "hereinafter called the buyer." That settles that question pretty clearly.

By Mr. TODD:

Q. Does that cover all of your operations?—A. The other third is some free territory, absolutely unbound to any colliery. We ship where we please. That is an increasing quantity, too. It is our best territory, and our shipments are gradually coming more and more from that. That we ship to C. D. Norton & Co., as our general agents in Philadelphia, sold for our own account.

Q. You do not ship any to New York from that?—A. Yes; they sell some in New York; they sell along the line.

Q. You do not know how it is divided; what general proportions?—A. No; I could not say as to that. I know this, that our prices are a good deal larger, as a rule, from them than they are

from the "trust," as they say, showing that somebody pays more for outside coal than they do the big companies. We get on an average 15 or 25 cents for our free coal—except with the smaller sizes, they generally run less—more than we do from this railroad.

Q. Were you a member of the Anthracite Coal Operators' Association?—A. Yes, sir.

Q. Were you ever an officer of that association?—A. I was a director.

Q. It published a monthly paper, did it not, called the Association Letter?—A. It was published occasionally. I can not say how often it was published.

Q. That was the name of it, you recall that?—A. I think so; yes, sir.

Q. In a general way what was that association?—A. It was an organization of the independent operators for the purpose of protecting their interests and securing such advantages as they could get.

Q. Do you recall that in May, 1898, a corporation was organized under the laws of Pennsylvania, to be called the New York, Wyoming and Western Railroad, to build a railroad from a point on the Delaware River, in Northampton County, Pa. (being also on the boundary line between the States of New Jersey and Pennsylvania), up to or near Belvidere, N. J., and thence to a point on the Susquehanna within or near Pittston, Luzerne County, Pa.?—A. Yes, sir.

Q. What was your connection with that company?—A. I was president.

Q. In a general way will you give us an account of its history, why it was projected, who were its backers, what progress it made toward completion, and why it was finally dropped?—A. I wish you would ask me the questions one at a time.

Q. Why was this New York, Wyoming and Western Railroad Company projected?

Mr. WARREN. I desire to note an objection to that question as incompetent.

A. It was done the same as all the other organizations and movements of the independent operators, in the hope of bettering their conditions, securing lower rates, and a better market for coal—in fact, better net results for their business, you might say.

Q. It was a part of what you might call the general movement that was begun with the projection of the New York, Susquehanna and Western Railroad in 1880?

(Objected to by Mr. Warren as incompetent.)

A. The New York, Susquehanna and Western and the Ontario and Western started from the market end, the New York end. This started here.

Q. I do not mean there was any definite connection between those two, but you say the purpose of it was to secure better freight rates, and, in general, to improve the condition of the coal market from the independent operators' standpoint?—A. The connection of the operators with it was for the same general purpose; yes, sir.

Q. Who were the principal backers of that road, so far as you recall them, besides yourself?—A. John Jermyn, Messrs. Simpson & Watkins. Perhaps I had better read from a paper which I have in my pocket, if you do not mind.

Q. Not at all.—A. (Referring to paper.) Dr. J. N. Rice; Messrs. Jones & Williams, owning one or two collieries here; M. S. Kemmerer, owning several collieries; the Connell Coal Company; O. S. Johnson; W. G. Payne; Jermyn & Co.; L. A. Watrous; E. L. Fuller; Reece G. Brookes; Clinton W. Wisner, and E. B. Sturges.

Q. When you say that these gentlemen whom you name were supporters of this projected road, do you mean that they were anthracite operators, all of them, who pledged tonnage to it?—A. Yes, sir; pledged tonnage and made subscriptions to its stock.

Q. And made subscriptions to its stock?—A. Yes, sir.

Q. What progress was made—what steps were taken—toward the carrying through of the plan?—A. The surveyors were put on and ran a number of proposed locations. A very few pieces of right of way were purchased; 7,000 tons of steel rails were purchased. We bought that rail at $18 and could have sold it within a year at $38.

Q. The charter, or the articles of incorporation, only authorized this road to build a line as far as a point opposite Belvidere, N. J., did they not?—A. That is all.

Q. How was it contemplated to get from there to tidewater?—A. We had not actually entered upon the construction of any road from there on. We thought we could get the transportation over some road. We knew that getting across New Jersey might be beyond our power.

Q. What roads would you have connected with?—A. We could not tell. We never had made any arrangements at that time.

Q. I do not mean what roads you could have actually entered into contracts with, but which you would have physically connected with—A. The Delaware, Lackawanna and Western Railroad, across the river; the New Jersey Central, and the Lehigh Valley, and the Pennsylvania, below the Belvidere division. We never got that far, because we felt if we could get through to the New Jersey line we could get to New York or to tidewater, until later; later there was another arrangement made.

Q. How many collieries at that time did Simpson & Watkins control?—A. I can only say in a general way.

Q. I mean in a general way.—A. In a general way, four or five, I should think.

Q. Can you also state, in a general way, what their output was of their combined collieries?—A. I would think my testimony would be of no value. I see you have Mr. Watkins subpœnaed.

Q. Mr. Watkins is subpœnaed, but that is not saying that he is here to testify. I do not want to ask you questions about a matter about which you have no information, but do you know whether there was as much as 2,000,000 tons?

Mr. WARREN. We object to this because the witness frankly says he does not know, and any answer which he might give would be a guess.

By Mr. TODD:

Q. I am asking whether you know whether it would be as much as 2,000,000 tons a year?—A. I know it is not that.

Q. Do you know whether it is as much as 1,000,000 tons or not?

Mr. WARREN. I submit this is incompetent, as the witness is asked to state that of which he has no personal knowledge and therefore could only hazard a guess, and it is hearsay testimony and is incompetent.

A. I have no knowledge, only by general hearsay and the statements made by these different gentlemen in our meetings and outside of them, when we were trying to get up this road, and I can only hazard an estimate of about 500,000 tons. I do not think it would exceed that under any circumstances, their free coal.

Q. They had other tonnage which you do not include in that, which was under contract with the coal companies?—A. I so understood.

Q. This railroad was never built?—A. No, sir.

Q. Did not a considerable number of these so-called coal-purchase contracts between operators and coal companies controlled by the railroads expire along about 1899?

Mr. WARREN. That is objected to as hearsay and incompetent, except within the personal knowledge of the witness as to such companies as he has stated he was personally associated with.

By Mr. TODD:

Q. I am asking you respecting your knowledge concerning the trade conditions. Do you know whether about 1899—it might have been the latter part of 1898 or the first part of 1900, but somewhere between the latter part of 1898 and the beginning of 1900—there were not a large number of these so-called purchase contracts expiring?—A. My testimony would not be of any value at all on that. I only know of two or three, I might say, that were expiring at that time.

Q. Those you mean were contracts which your own companies had made?—A. No, sir; one or two were, but I knew of one or two others that the parties interested told me of. But my testimony would be almost valueless on this point, because here were a great many different contracts, and, so far as my knowledge goes, there would be two or three of them that ran out about that time. The rest I would simply have to give you hearsay on, which is of no value, and from that I would not make the number large. I think "a large number" would be the wrong term to apply to them. But that is all a guess.

Q. I just wanted to get your knowledge.—A. I have no knowledge, you might say, except as to the three or four.

Q. But you do know of three or four?—A. Yes, I do know three or four expiring, because one or two were our own.

Q. That was in 1899, about?—A. About then; yes, sir.

Q. Do you recall that in November, 1899, a corporation was organized called the Delaware Valley and Kingston Railroad Company, under the laws of New York, to build a railroad between Kingston, in Ulster County, N. Y., to a point in Sullivan County, N. Y., opposite the borough of Lackawaxen?

Mr. WARREN. This is objected to unless it is preceded by inquiries to associate the witness with this alleged projected road, so as to put him in a position to testify in accordance with the rules of evidence; otherwise he is simply asked to hazard either a guess or to give us some rumor or newspaper talk, which I submit is incompetent evidence.

A. What I can recall is simply the report made to us that such an organization had been chartered, to help in carrying out the purposes of our organization. I do not think I was a party to that charter or the application for it. I have no recollection of having been, or of ever having seen it.

Q. Were you a supporter in any way of that project?—A. I presume I would clear the air as to myself in a way if I could just in a few sentences give the general situation, which is the truth, any way. We went ahead and bought these rails. A few months afterwards—I can not give exact dates—a number of these collieries pledged to our road, or rather the stock in a number of these companies, and the collieries too, were sold. I only know to whom by hearsay, except in one case. That, of course, absolutely crippled our road, although 10 per cent of the stock had been paid.

Q. When you say your road, you mean the New York, Wyoming and Western?—A. The New York, Wyoming and Western. After going over the matter we made up our minds that the tonnage held under the contracts could not be taken away from the new road if we built it. So we started again. We secured some new collieries. Simpson & Watkins, for example, told me that their coal was still ours, and others who had sold said the same thing. They simply had sold their stock or their collieries, but the tonnage was under contract to us. We got, as I say, some new collieries. The chief among these was the Pennsylvania Coal Company. Mr. E. L. Fuller was intimate with Mr. Thorne, the president of that company, and the negotiations with the Pennsylvania Coal Company were largely left to him. I lived in Scranton and Mr. Fuller was in New York most of the time, and, as I say, a friend of Mr. Thorne's, so that the rest of us directors had very little to do with the negotiations after the Pennsylvania Coal Company came into the arena, and all that took place after that is largely a matter of hearsay, or reports made to us by Mr. E. L. Fuller.

Q. You regarded, however, this Delaware Valley and Kingston as merely a continuation of the first project, the New York, Wyoming and Western. That is correct, is it not?

Mr. WARREN. We object to what the witness regards it as, as being incompetent evidence.

Judge MOOT. It is asking for the opinion of the witness on a question on which opinion evidence is incompetent.

A. As a step along the same lines, but in a different direction. If you will allow me to say, to make that intelligible, in about a year after the organization of our road——

Q. You are speaking now of the New York, Wyoming and Western?—A. Always the Wyoming and Western—and after the Pennsylvania Coal Company had agreed to come into the project we made a contract with the Erie and Wyoming by which they agreed to take our coal from the valley, from the different collieries in the valley, except where we had to build branches to get into them, and to deliver it to our own road at Wimmers, which is about 15 miles out. This was the first arrangement looking to the completion of our original line down through New Jersey. That contract was actually closed and we gave a bond—most of those who were the original projectors of this gave a bond to the Erie and Wyoming that that road should be built within two years from Wimmers on. Afterwards, through Mr. Fuller's and Mr. Thorne's negotiations, they decided it would be better to go down through, following the line of the canal——

By Judge CAMPBELL:

Q. To Kingston on the Hudson?—A. Yes; to Kingston on the Hudson. And building this road would stop all their part of the project. That is the way that came on.

By Mr. TODD:

Q. How was this road to get to Lackawaxen?—A. I can not tell you. You will have to ask some one else, because I would have to give you hearsay. The connection of any one of us, except Mr. Fuller, with this whole scheme, you might say, ceased as soon as the Pennsylvania Coal Company made this contract with us and these new suggestions were brought up. Then Mr. Fuller did the entire business. I was in Pennsylvania and only once or twice in New York, but Mr. Fuller was doing business there all the while, met them every day or two, and the whole thing was left with him. So if you ask me anything that took place after that it is only hearsay. I know that we found we were not getting our road, and we sold our rails at the cost and storage, with interest, when we could have doubled our money on them. That is the situation.

By Mr. WARREN:

Q. You mean doubled your money on the price of the rails?—A. On the rails; yes, sir.

By Mr. TODD:

Q. Do you know what the relation was between the Pennsylvania Coal Company and the Erie and Wyoming Railroad?—A. Yes, sir; the Pennsylvania Coal Company owned the stock of the Erie and Wyoming.

Q. Did the Pennsylvania Coal Company own it itself, or did the stockholders of the Pennsylvania Company own it?—A. I could not say, but it was built by the Pennsylvania Coal Company, through John B. Smith, then the superintendent of the Pennsylvania Coal Company.

Q. They promoted it?—A. They built it.

Q. Do you know between what points they ran?—A. From Hawley to Pittston, with a branch into Scranton.

Q. Did it ever build a line from Hawley to Lackawaxen?—A. No, sir; I think not. They used the Erie road from there down.

By Judge MOOT:

Q. From Hawley?—A. Yes, sir.

By Mr. TODD:

Q. There is a piece of railroad between Hawley and Lackawaxen; do you recall whether originally that was built by the Pennsylvania Coal Company itself in the early days?—A. I think so; at least that is my understanding.

By Mr. WARREN:

Q. Did you understand him? From Hawley to Lackawaxen, he says?—A. My understanding is that the Pennsylvania Company furnished the money for it to the Erie Railroad. That is my understanding of it.

By Judge CAMPBELL:

Q. It was, as a matter of fact, a branch of the Erie road?—A. Yes, sir.

By Mr. WARREN:

Q. What is known as the Honesdale Branch of the Erie Railroad?—A. Yes, sir.

By Mr. TODD:

Q. The Erie operates it?—A. Yes, sir.

Q. Do you recall when the percentages which the coal companies paid the operators was increased from 60 per cent to 65?—A. In a general way, I should think about seven years; yes, about eight years ago. I am speaking in a general way. About 1900 or 1901.

Q. Were you connected with the negotiations which led to that increase?—A. No, sir; I was a member of the Operators' Association, but, as I remember, the principal work was done by a committee, and I was not personally a member of that committee.

Q. That committee made a report, I suppose, to the full association?—A. Yes, sir.

Q. And from that report you would know what the results of the deliberations of that committee were, would you not?—A. It resulted, as I understand, in the present existing contracts, under which most of the present individual operators are working.

Q. There was one form agreed upon?—A. Yes, sir.

Q. And that, you understand, is the form under which most of the independent operators at the present time sell their coal to the railroad companies—A. If they do sell their coal. Of course, for instance, the Dolph colliery is selling under no contract.

Q. I mean where they do sell the coal under contract.—A. Yes, sir. The Pinehill is selling a third to a half of its tonnage under no contract.

By Judge Moot:

Q. Where they sell under no contract, they in fact sell on the terms of the contract as if there was a contract; that is, I mean as to grading and price, and so on, and delivery?—A. That applies, for instance, to the Dolph colliery, which acts exactly as though they had one of those contracts. The Pinehill, it does not apply to them. We get what we can and carry out the other terms of the contract, try to prepare our coal as the contract provides. It is the most complete and perfect contract for coal preparation we ever had, far beyond anything we ever had, and yet, in some respects, it is terribly vicious, in my judgment.

By Mr. Todd:

Q. Under that contract, of course, the operator or the operators cease to be competitive factors in the anthracite industry, do they not?—A. The Pinehill Coal Company, for example, is a competitor surely.

Q. I mean under that contract the companies which make it——A. If they were all under contract.

Q. I am referring to those companies which make the contract. They are thereby eliminated for all time as competitors in the anthracite coal industry, are they not?

Mr. Warren. That is objected to as a plain effort to get the witness to state a legal conclusion, and it is incompetent.

A. I should think that would be the result during the term of the contracts.

Q. The contract is for the life of the collieries, is it not?—A. Not always.

Q. In most cases?

Mr. Warren. We object to that unless the witness shows a knowledge of most cases.

Mr. Todd. I am asking him with respect to a trade condition. I do not understand it is necessary to introduce every one of these contracts.

Mr. Warren. I submit of record that the witness is not justified in expressing an opinion with reference to trade conditions, or any other subject, unless he is shown to have familiarity with the matter he is asked to express an opinion about.

A. I think so, but I am unable to speak definitely at all. I know some cases in which it is not, to my personal knowledge.

Cross-examination by Mr. WARREN:

Q. You have spoken in a general way of your residence in this part of the anthracite region, of your associations with several coal companies as a stockholder and operator in a sense, and also as counsel for some of the larger companies who were factors in the development of the anthracite region hereabouts, have you not?—A. Yes, sir.

Q. You have spoken of certain railroads which penetrate certain portions of the region spoken of as the anthracite coal region, and I am assuming that you have had in mind, in answering those questions, more particularly, at any rate, that part of the region which we speak of up here as the Lackawanna field?—A. Yes, sir.

Q. Is it not a fact that that field is a separate and distinct one, due to the geological formation, even from the Luzerne end of what is known as the Wyoming region? In other words, is not our Lackawanna Valley a field by itself?—A. Yes, sir; I should so consider it.

Q. Speaking of it in the trade, as the counsel uses that expression, it is known in the trade as the Lackawanna field, is it not?—A. So far as I know it is, in late years. Formerly we were always called the Wyoming region.

Q. But the Wyoming region, as you understand it, extends south through a portion of Luzerne County?—A. South and west of Campbell's Ledge.

Q. And north and east of Campbell's Ledge is the Lackawanna Valley?—A. Yes, sir.

Q. The Wyoming region is south and west of Campbell's Ledge and goes south and west down to and some considerable distance south of Wilkes-Barre, does it not?—A. Yes, sir; below Plymouth.

Q. Campbell's Ledge being at the upper end of the Wyoming Valley?—A. Where the Susquehanna River comes into the valley.

Q. At the upper end of the Wyoming Valley?—A. Yes, sir.

Q. You say you do not know of the labor basis contracts specifically, not being at that time, as I understand you, associated with any of the operations which sold upon that basis; but do you not recall that that was the general basis where individual operators sold their coal, as, for instance, Mr. William T. Smith, who had the Mount Pleasant colliery; William Connell & Co., who had the colliery at Minooka; and the colliery up the valley operated by W. W. Winton and George Pheiler? Do you not remember that those collieries were upon the labor-basis contract?—A. I think nearly every individual operator in the valley was under the labor-basis contract. I saw the contract for a number of individual coal operators, and they all had the labor basis, so far as I remember.

Q. That contract provided, did it not, a certain figure as the price for the coal, which was to rise a certain number of cents per ton if the operator had to pay a certain number of cents more to his employees to labor, in other words, and was to lower a certain number of cents if the wages lowered a certain number of cents?—A. Yes, sir.

Q. These railroads of which you spoke of coming into this section, they only enter it in a way to serve certain collieries, do they not? That is to say the railroads do not go to all collieries, even in the Lackawanna Valley?—A. No, sir. It is a very fortunate colliery that has more than one railroad in immediate contiguity to it, in the immediate vicinity.

Q. Take the Lehigh Valley to-day. It comes up to the Austin Coal Company, and the Elliott-McClure, at Rendom, which is a few miles south of Scranton, and that is as far north, or as far into the Lackawanna region, as it has penetrated; is not that right?—A. I think so, and I think it is comparatively recent that it has been up there. It was not there in the days of the old Susquehanna and Western Company.

Q. Bye-the-bye, those two collieries are to-day independent operations, are they not?—A. All I know is by report. I know nothing of them personally.

Q. So far as you know, you know they were originally independent operations?—A. Yes, sir.

Q. So far as you know, or have ever heard, they continue independent operations to-day?—A. Yes, sir. As in the case of some of Mr. Todd's questions, my answer is of no value.

Q. I want to straighten out a question in which I fell into error when examining Mr. Richmond. The Susquehanna and Western, when it came into this valley, used the Winton branch of the Delaware, Lackawanna and Western to get into Lackawanna Valley from Nay Aug building a continuation of it at or near the village of Winton?—A. Six miles inland.

Q. So it used the Winton branch of the Lackawanna, on the east side of the Lackawanna Valley, and then when they got to a point where they wanted to connect with the collieries of which you have spoken, they built their own spur line?—A. They used the Lackawanna line from a point 2 miles east of Stroudsburg.

Q. I was speaking of what they built?—A. They built nothing in the valley except an occasional switch and that 6 miles to get across the river.

Q. You say an important factor in their coming into this region was their acquisition and ownership of the old Pennsylvania Anthracite Coal Company properties?—A. Yes, sir.

Q. You remember that that was a very large acreage of land south of Scranton, but in this Lackawanna Valley?—A. Yes, sir.

Q. And that it had what were known as the East Side and West Side divisions of the land?—A. Yes, sir.

Q. With coal operations on both sides?—A. Yes, sir. I know these things as being their attorney. I know them as well as you can without being actually cognizant of them.

Q. You have spoken of their assisting the opening and developing of certain individual operations up here. You know that in that way, do you not?—A. Yes, sir.

Q. You have said that your impression is that the first change, after the labor-basis agreement, was one of 40 or 45 per cent, and that that preceded the 50 per cent, so-called 50 per cent, contract promised to operators by the New York, Susquehanna and Western. Can you tell us the names of any independent operators in the Lackawanna Valley who sold their coal upon a 40 per cent basis later than the labor basis?—A. Not positively; no sir. I can only give my general impression from having been attorney for a good many individual operators, and my impression is that the jump when the Susquehanna and Western came in was from 40 and in some instances 45 per cent to 50 per cent.

Q. Do you not recall hearing at the time—in other words, having this impression at the time rather than the impression you have just given us about the 40 to 45 per cent—that what the fact was was this: The individual operators who had sold their coal on the labor basis contract, not being able to make ends meet, as the expression is, were given what I will designate as a gratuity—you may call it what you will—but were given a certain additional figure by the railroad coal companies, so called, a plus figure in addition to the labor basis, which, added to the labor basis, would make up 40 or 45 per cent of the tide prices? Is not that the fact?—A. That may be, but my recollection is not sufficiently definite as to the matter to answer that question.

Q. Is your recollection sufficiently definite to say I may not be right in my question?—A. Not at all. I will say this, that I have no recollection whatever of any written contracts for the payment of any 40 or 45 per cent, although there may have been. My recollection is that at the time we got the Susquehanna and Western Company in here the individual operators, as a rule, were getting 40 to 45 per cent for their coal, but I do not remember a single contract ever made on that basis.

Q. The New York, Susquehanna and Western, in coming in, developed this Lackawanna Valley as an anthracite coal-producing region, did they not? In other words, in a sense they were pioneers—you correct me if I am wrong about it—because what they did was to first take their Pennsylvania acquisition and add to that the coal that they secured by properties which, before they came in, were virgin, but which were opened and developed by reason of their financial aid to the owners of the coal leases; is that practically true?—A. They certainly were a very strong factor in the development of the Lackawanna Valley. That is absolutely true.

Q. Do you not remember that they fathered, or, if that is too strong a term, at least assisted materially in the opening of the Dolph property?—A. The Winton.

Q. The Winton above, being virgin before, I mean. The Lackawanna?—A. Yes, sir.

Q. Perhaps you can name others, but those are the only three that occur to me just at this moment.—A. They virtually reopened, as I remember, or made profitable these two Pennsylvania anthracite

collieries and a number of others. I can not, after twenty years, give the details exactly. Mr. Jermyn, for instance, can remember the history of the Pennsylvania anthracite much better than I can.

Q. The point I wanted to make clear was this, which I believe to be the truth about that matter, that the Susquehanna Company, in coming here, added to the anthracite business by the opening of new fields, speaking broadly, rather than an interference in any way with those then-going concerns; is not that right?—A. I have been here forty years virtually, thirty-nine years, and the two greatest helps that the anthracite business, at this end, at least, has had has been the coming of the New York, Susquehanna and Western and the New York, Ontario and Western into this region. That is my judgment.

Q. They have both opened and developed large new acreages of coal lands?—A. Yes, sir.

Q. That have theretofore been barren, or virgin?—A. Yes, sir.

Q. Or at least they assisted in opening and developing them?—A. Yes, sir.

Q. And they constructed into these individual operations the necessary trackage facilities; in some instances spending large sums to get to the colliery locations, did they not?—A. Yes, sir; in some cases.

Q. The Ontario and Western did that likewise, did they not, when they came in?—A. Yes, sir.

Q. Take the collieries north of Scranton, which were opened and developed by the assistance of the Susquehanna Company. They, having made the trackage arrangement, whatever it was, with the Lackawanna, got from Gravel Place into this valley, speaking of north of Scranton now, and then constructed at the expense of more than $100,000 at any rate, a road for the express and sole purpose of furnishing transportation facilities for the coal at the Dolph and the Winton and the Lackawanna collieries, did they not?—A. Yes. They started first at the Lackawanna.

Q. But what I mean is that the 6 miles you spoke of meant an expensive construction of road?—A. Very expensive.

Q. The sole purpose of which was to get to the colliery?—A. That is true, to three or four collieries. I think there was one other colliery besides the Dolph and Winton, and I think they had a contract with one of those collieries immediately east of the river; but I am not sure. It is twenty-five years ago, about.

Q. In order to build in these lines to the colliery sites, the location of the breakers, I mean, these carrying roads, speaking broadly now and within a region with which you are very familiar, have spent very large sums of money necessarily incident to the construction of the lines to reach the collieries, have they not?—A. Yes, sir.

Q. And where they did that, whether they also assisted in the expenses incident to the opening and development of the collieries or whether they did not, they secured contracts and insisted upon binding to themselves the coal from those collieries to which they had

made these large expenditures by completing their railroads; is not that right?—A. As a rule, yes, sir.

Q. These particular roads, or spur lines, or laterals, or whatever you may call them, are valueless after the coal is exhausted from the collieries, are they not?—A. In nearly all cases.

Q. Practically speaking, they are only worth that which is represented by the colliery and the life of the colliery?—A. Yes, sir.

Q. These contracts that were made, so far as you can recall them, were for the entire output of the colliery, were they not?—A. In some cases; for others they were not. If we could get the entire output we took it, but in some cases we could not get the entire output. This was especially true, however, of the Ontario and Western.

Q. I am speaking, just for the moment, of the New York, Susquehanna and Western. Most of the contracts that were made were then made for all the coal from those breakers?—A. Nearly all of them; yes, sir.

Q. You have said that they were originally made with the railroad company. Do you not remember that afterwards those contracts were assigned by the railroad company to The New York, Susquehanna and Western Coal Company?—A. Yes, sir.

Q. Which was a coal company that was organized after the receivership of the Pennsylvania Anthracite Coal Company?—A. I remember that those in which I was interested were so assigned. I presume the others were.

Q. That company acquired the mines formerly owned by or under lease to the Pennsylvania Anthracite Coal Company; is that right?—A. I only know by hearsay. I was not connected with it then.

Q. The Ontario coming in—also an important factor in securing their entrance here—they came in from a point on their main line and ran into this Lackawanna region only to the part which represents the city of Scranton and north of it; is not that right?—A. Correct; yes, sir.

Q. And they constructed at great expense that road, did they not?—A. Yes, sir.

Q. In other words, it cost them, I assume it is fair to say, into the hundreds of thousands of dollars to build that line from the point where it leaves their main line in the State of New York to the Lackawanna Valley?—A. You might say millions. The getting through the valley, the right of way, especially, was enormously expensive.

Q. That region was, so far as its passenger and general freight facilities were concerned, accommodated by the Delaware and Hudson prior to their coming, was it not?—A. South of Carbondale; yes.

Q. And Carbondale practically represents the extreme northern limit of the coal deposits in this county, does it not?—A. They run 5 or 6 miles farther, but the best coal deposits are this side of Carbondale.

Q. Is it not a fact that the only way the coal runs north of Carbondale is in a little spur which runs up to the county line at Forest

City?—A. After you pass Carbondale the coal measures thin out very rapidly.

Q. And terminate absolutely at Forest City?—A. Yes, sir.

Q. The Ontario and Western, as you have said, assisted very materially, either in the original opening of acreages, before virgin in some instances, perhaps, or in the enlargement of breakers that had been in operation prior to that time, and as a part of the consideration of that loan and as a part of the consideration of their construction of their trackage into the region and into the collieries, they secured contracts which took the coal from those colliery operations, did they not?—A. Yes, sir.

Q. Do you remember as to those contracts whether they were all, or, if they were not all, what proportion were for the life of the collieries?—A. I remember in getting the original tonnage, some 700,000 or 800,000 tons. We only secured in the first place from Mr. Richmond a contract for 50,000 tons a year from his colliery. Simpson & Watkins only gave us 100,000 tons, I think.

Q. From the Northwest?—A. From the Northwest colliery. The Lackawanna Coal Company, with which I was personally connected, and had been built before the Susquehanna and Western, when they came in here, estimated a tonnage at about 100,000 a year. One or two others—I am unable to give every one—we had to take a portion of the tonnage. But the demand for coal was so small, comparatively, in those times that, for example, the Lackawanna and the Olyphant, I think, in a number of years shipped only 200,000 tons. That is, the Susquehanna could not take our coal. That was true of a great many of our collieries. These two railroads got in here; the sale of coal was not sufficient to take the entire output of the collieries, so that the collieries nearly all had a great amount of idle time. Of course, they have some to-day, but it is infinitesimal compared to what it was twenty-five years ago.

Q. Where the Ontario and Western did not secure contracts for all the coal, if they secured a contract for a certain proportion of the output of the colliery, was not that contract to run for the life of the colliery, even though it was only for a part of the output?—A. I do not think so in all cases.

Q. Was it not in some cases?—A. In some cases; yes, sir.

Q. And were not some of them for a long term of years?—A. Yes, sir.

Q. For that part of the colliery output which was contracted to them, I mean?—A. Yes, sir; except, for instance, in cases like the Lackawanna, which refused to make any absolute contract with them.

Q. Of course, I do not mean in their case, but there were instances where it was for a long term of years?—A. Most of them were long-term contracts.

Q. Some were for long terms of years, and others for the life of the colliery?—A. The Dolph and Winton, for instance, were for the life of the colliery. I must correct that, however, as far as certain

lands; as the land then owned or leased by the company extended. You understand me? That, for instance, the Dolph Company at that time had certain tracts of land from which it was getting its coal. These contracts covered all coal taken from those lands, and the same with the Winton, but did not cover lands subsequently acquired. Now, our coal being all gone from the lands covered by the original Susquehanna and Western contract, our new territory is entirely free. I simply give that as an example of what is taking place in a number of cases. These collieries are rapidly being exhausted.

Q. Is it not true of the Susquehanna and the Ontario and Western that before they went to the very large expense represented by the entrance into the region, they secured the pledges, as you have outlined them by this reference to the contracts, of the output of certain colliery operations in the region?—A. Yes, sir.

By Judge MOOT:

Q. So as to repay them for building these expensive lines?—A. Yes, sir; they had no other business in here—I am speaking of these two cases—they had to depend on the coal business. There was nothing here to pay a mill on the dollar except the coal. I am speaking of these two cases.

Q. So that they had to know that they would get enough of it to repay them if they did build?—A. Yes, sir; as I say, they did not pay even for surveys until I sent them contracts for a half a million. That was the agreement, until I could secure for them one-half a million tons. That was the Ontario and Western.

By Mr. WARREN:

Q. You have told us of your association with the New York, Wyoming and Western Railroad and the extent to which the road was projected. The withdrawal by Simpson & Watkins did not stop the projection of that road or cause those interested therein to withdraw from its proposed construction? That is true, is it not?—A. It did not cause us to withdraw absolutely, but it caused us to shiver badly.

Q. Is it not a fact that following their withdrawal you gentlemen continued your negotiations and arrangements and plans for the construction of this proposed road, and that the final disposition of the rails, of which you have spoken, and the final abandonment of the proposed construction of the road, occurred after a committee had conferred with the representatives of the coal companies, the large coal companies to whom the coal had been sold on the 60 per cent basis, and had secured from them the contracts which are now known as the 65 per cent contracts?—A. That is practically true. Of course, the death of this Wyoming road was so gradual that we were hardly conscious when the actual departure took place. We made up our minds at last that we would let the rails lie up there until they rusted away at Mount Pocono, but we sold them, as I say, and got just our money back, when we might have made $50,000.

Q. Let me give you an illustration of one of the things that I think perhaps staggered you also in that. You will correct me if I am mistaken. Mr. John Jermyn, who had pledged to you the output of his collieries, he and his son Joseph being together interested in their operation, said to you some time after the Simpson & Watkins sale to The Temple Iron Company, that he would not have anything more to do with the new road if he could get a fair price for the coal, and that he felt that the 65 per cent contract, as it was designated, was a fair price for the coal, and therefore you must let him out on any suggestion of the construction of the road thereafter?—A. Mr. Jermyn said so much that I think I have heard him say just about what you are dictating, but he showed no lack of loyalty until after Simpson & Watkins and others had sold out, and we had his contract for his coal any way, so that did not bother us much, if we could have built our road.

Q. You recall, of course, testifying in what has been designated here as the Hearst inquiry in New York, Mr. Shearn examining you there before the Interstate Commerce Commission?—A. Yes, sir.

Q. And reference being made there to your association with the proposed New York, Wyoming and Western Railroad—do you remember that?—A. I remember some questions were asked.

Q. Did you not there say, and is it not in accord with your recollection now, that the movements of which you were a part and in which you participated, whatever they were and in whatever direction they were, were to aid in securing a better price for the coal?—A. Yes, sir; I do not remember whether I said so, but that is the truth.

Q. As a matter of fact, you did say it.—A. We were after financial results.

By Judge CAMPBELL:

Q. On behalf of the coal operators?—A. Yes, sir.

By Mr. WARREN:

Q. That operators' association, bye-the-bye, its corporate existence, its continuance, is a matter of record even down to this date; is not that so?—A. I had supposed that was defunct.

Q. Let us see if I can not refresh your recollection. You have said that the negotiations to secure the 65 per cent contract made through the committee on behalf of the independent operators' association was in 1900 or 1901?—A. Somewhere along there.

Q. You remember that the sessions of the strike commission were in the winter of 1902 and 1903, do you not?—A. About those dates. Of course I am not prepared to give them exactly.

Q. Do you remember that their award went into effect the first of April, 1903?—A. It will be six years next April.

Q. Do you not remember that that association was represented by counsel before the strike commission, Mr. Burns and Mr. H. C. Reynolds being their attorneys?—A. Yes, sir.

Q. So that they were alive, then, in 1902 or 1903? Do you not remember that thereafter they had conferences? Do you not remember that Mr. H. W. Kingsbury is their secretary to-day, or do you not know that?—A. I do not know anything of that. I have been out of the city a great deal in the last three or four years. I do not know of any general meetings of the anthracite operators' association in several years.

Q. You can, however, bring it down to 1903 by my refreshing your recollection?—A. Yes, sir; that is correct.

Q. I want to ask you about the independent operators in this part of the region—in the Lackawanna Valley, in other words—that you know of to-day. In the first place, there is the Dolph Coal Company, in which you are associated; and there is the Mount Jessup Coal Company, is there not?—A. Yes, sir; I know of the existence of that one.

Q. As an independent operator to-day?—A. Yes, sir.

Q. There is the North End Coal Company?—A. Yes, sir.

Q. There is the Green Ridge Coal Company?—A. Yes, sir.

Q. There are the two that I have already called your attention to—the Austin Coal Company and the Elliott-McClure Company down the valley?—A. I only know of those by reputation. I have no personal knowledge of the manner of their conduct.

Q. I am not asking you about personal knowledge, except so far as to ask you if you do not know that they are coal companies here—the Austin and the Elliott-McClure, which Mr. Matthews and other gentlemen are operating as individual properties?—A. I only know it in a general way, just as I know that people whose stores I have not been in in five years are still doing business. It is common report.

Q. Do you know the Moosic Mountain Company?—A. Yes, sir.

Q. You also know of the People's Coal Company right here in Scranton, as an independent company?—A. Yes, sir.

Q. You pay them $3.75 a ton for coal delivered at your house to-day, which is pretty nearly 50, if not 100, per cent more than you paid twenty years ago. Is not that so?—A. Yes, sir.

Q. In other words, the price of coal has raised right here to us men living on the top of the mines, buying from the operators right here, almost 100 per cent in the last twenty years?—A. Yes, sir; that is approximately correct. I know also that I have paid more for coal to heat my house than I have gotten from collieries in which I have hundreds of thousands of dollars invested in the last five years. I have not made enough in collieries in which I have over a hundred thousand dollars invested to pay my house coal bills.

Q. Do you not know of the Nay Aug Company, in this county, another independent corporation?—A. Yes, sir.

Q. Do you not know of a company that Mr. Welles has called my attention to, but of which I do not know the name, that Mr. Dolph is interested in? The Sunnyside—do you not know that?—A. I do not know the name, but he has an operation.

Q. All these are in our county in the Lackawanna region?—A. Yes, sir.

Q. Do you not know of the Jermyn & Co. regions down at Rendom, John Jermyn, or rather the estate, and Joseph J. Jermyn?—A. Yes, sir.

Q. They now have, or did have, two collieries, did they not?—A. They have two, I think.

Q. Do you not also know of one north of Carbondale known as t Black Diamond Coal Company?—A. Only by report, that is all. have no personal knowledge. I know of one or two small ones above Dunmore. That is Mr. John Fowler. That has already been referred to.

Q. You know of Murray, Kearney & Brown up at Dunmore?—A. I know there is such an organization, but where they are working I do not know.

Q. You know it is up in Dunmore, in this country?—A. I know there is such a firm, because I have bought coal from them.

Q. So there are a considerable number of independent coal operators right in this one county to-day, doing business?—A. Yes, sir; there must be.

Q. You spoke of the inability to make money on the part of these independents?—A. That is not universal.

Q. I am going to prove it is not even true in your case. You were the owner of one-fifth interest in the Lackawanna Coal Company and one of the original projectors and incorporators of the company, were you not?—A. Yes, sir.

Q. That was about 1881, was it not, that you started to mine?—A. About that, yes, sir; somewhere about that.

Q. And you operated as an independent concern from 1881 till the time you sold your interest in it to Simpson & Watkins, or rather to The Temple Iron Company, they securing an option from you; is not that right?—A. Yes, sir.

Q. The fact being that The Temple Iron Company purchased four-fifths of the stock of that limited copartnership association, Mr. Law or his widow—I have forgotten whether he was then dead or not—declining to sell her fifth interest. Is not that right?—A. Yes.

Q. You had dividends on your interest in the Lackawanna from 1881 down to the time of that sale, which was about 1891? That would represent a very large sum of money, would it not?—A. I do not think we had any dividends for the first five or six years at all. That is my recollection. After that we had, at times, very large dividends.

Q. But speaking of it by and large, speaking of your entire association with it, it was a profitable concern?—A. Yes, sir; of course, I deny your right to catechize me on those points, but, as a matter of fact, that general answer I could make.

Q. I am not asking for figures, but in general it was a profitable concern?—A. Yes, sir.

Q. When you sold to The Temple Iron Company I want to ask whether the price they paid did not represent only and solely a fair price for that property? Or, to put it in another way, did they pay you any more than it was barely worth at the time you sold the interests which were sold to them?—A. I do not think they paid us 50 per cent of its real worth. I would never have sold it if I had not been in bad company, that I had to sell it with.

Q. The Government allege that the Temple Company bought these properties at high and exorbitant figures, irrespective of values, and I want to show that, so far as the Lackawanna is concerned, it did no such thing.—A. If I remember rightly, we received $200,000, and I think that colliery that we sold at that time would have been very cheap at half a million. That is my judgment. It is not entirely in view of what has happened since then either. I thought the same way then; could not help myself.

Q. Your Clarence Coal Company you sold to the Hillside only a matter of two or three years ago; is not that right?—A. That is right; two and a half years.

Q. The Pinehill you are now interested in and, as you say, control?—A. Yes, sir.

Q. You have said that the contract with the two companies to whom you sell two-thirds of the coal is fair in most respects, but terribly vicious in some. You used the expression "terribly vicious."—A. I did not use that in reference to these contracts alone, but the general contracts.

Q. I want to ask you about that. When you speak of those 65 per cent contracts as terribly vicious, you mean, do you not, solely as to the features of them that have to do with the inspection of the coal; which includes preparation?—A. That is practically it; yes, sir.

Q. Is it not a fact that that is a condition which is due to a mistaken notion on the part of the public in this country rather than the actual quality of the coal itself?—A. The expense of mining and preparing coal is very greatly added to by two requirements in our contract; the one compelling the breaking of the coal twice. There is a terrible loss on each breakage. The first breakage is necessary, of course, as Mr. Richmond has said; you can not take those immense chunks of coal that come out of the mine and sell them in that way. The first breakage is necessary. That breaks them, as I understand—I am not a very practical miner myself—but that breakage reduces them to grate. If they could remain of the sizes made by the first breaking I think that coal could be sold at a profit 10 per cent cheaper than it is to-day. The public will not take it, though; it has to be broken again. The dust, so far, is unsalable, although it is the purest of carbon. The other great needless expense, or one which should be needless in the preparation of coal, is in the fact that, so far as the public purchases coal, the purchase is not based on carbon or its coal-burning properties, but on its appearance. As I say, I am not a practical miner, I have lots of other business, but I know enough about it to know these things. For instance, you get a car loaded

with coal, and there will be a little bit of a cap of slate on a piece of coal that will weigh a quarter of a pound. That cap will not be thicker than that sheet of paper, perhaps, but it will not go. That is thrown out, thrown away. One of our superintendents at the Dolph told me the other day they had picked up hundreds of tons of coal just like that out on the tracks where they inspect the coal, and had brought it back to the foot of the elevators, so that they could take it up through again. As a rule, the people carry it off and use it for their own purposes, but he wanted to save it and brought it back. You can see what that waste is. There probably will not be more than a sheet of paper upon a half a pound of coal.

By Judge CAMPBELL:

Q. The point is, the public will not buy it?—A. The public will not buy it. Allow me to say this, because to my mind this is the most important of all. If I can look at my contract, I can exemplify it in a minute, because I can not always remember figures. This will indicate what I mean, the inspection clause.

By Mr. WARREN:

Q. About 40 to 65 per cent carbon?—A. Yes, sir.

Q. I was going to ask you that. It defines what is coal and what is bone.—A. In the contracts, my contract between the Pinehill and Reading Coal and Iron Company, which I suppose is similar to all the other individual contracts, among the provisions for inspection are the following: "The sizes above mentioned shall in no case contain more than the following percentages of refuse, consisting of slate, rock, and fire clay, to wit: Broken 1 per cent, egg 2 per cent, stove 4 per cent, chestnut an average of not more than 5 per cent and at no time to exceed a maximum of 7 per cent, pea 8 per cent, buckwheat 10 per cent." Those are right, because we have no business to sell stone and matters that will not burn to widows and orphans and people of that kind or anybody else. It makes it awfully expensive to get it to those points, but that is all right. Here is where my criticism comes in: "Nor more than the following percentages of bone;" they define bone here as anything that contains a portion of fixed carbon ranging between 40 and 65 per cent, pretty nearly good coal.

Q. By inference, therefore, they say that the material that has 65 per cent or more of carbon is coal?—A. Yes.

Q. But that material between 40 and 65 is bone; is not that right?—A. Yes; they call it bone, although bone is in some ways the most inflammable and best burning material. If you get it burning in the culm pile, you can not get it out. Here is the restriction: We can not put in more than the following percentages of bone in any of the coal we ship: "Broken 2 per cent, egg 2 per cent, stove 3 per cent, chestnut 5 per cent." That is, you have got to throw out all but those slight percentages of fuel that holds 65 per cent of carbon in it. "Pea and buckwheat coal shall not contain such proportions of such bone as to reduce the price below the average market

price of those sizes." There is a waste, a very large percentage, and an enormous expense added to the coal, and the trouble is that it is left to the judgment of one man, a $2-a-day man. He gets on these cars, although they are loaded, and there is nothing in the world to prevent his condemning every car on the train and making a thousand tons of the output of the collieries a source of loss to the operator, and it is the public that is behind it. You are either obliged to put a lot of men on each of those cars, shovel it over and throw out a lot of stuff, or you have got to run it back through your colliery, and in either case you might better have omitted that day and shut your colliery down.

Q. You do not mean that the inspection is any different to the independent than to the coal company with its own collieries; but this is a condition which the public has created by reason of the fact that they think the appearance of the coal determines its value?—A. Yes; there should be arrangements for testing the coal, for ascertaining the amount of carbon, not on its appearance. Then we all might make money—we are losing it now—and we would all be in better shape.

Q. Take your own operation at Pinehill; it would enable you to ship a very considerable tonnage, thousands of tons of what is really coal, but which, by virtue of this condition, now have to go to waste?—A. Yes, sir; in every month many thousands—in a year, anyway—probably every month.

Q. Does not that enter into the necessity for a price, in view of the demands of the public as to appearances rather than quality, that shall enable you to stand that waste of that which is just as good as the good-looking coal and which the public will not take?—A. That is a matter you can argue as well as I can testify.

Q. As a fact, is it not true?—A. Yes; it is a fact. In my judgment, anthracite coal is the cheapest necessary commodity sold on the market to-day.

(At 1 o'clock p. m. a recess was taken until 2 o'clock p. m.)

By Mr. WARREN:

Q. You recall, of course, the strike in the regions, generally, in the fall of 1900?—A. Yes, sir.

Q. You remember that after its continuation for a few weeks it was finally adjusted, or the men satisfied, and returned to work by the agreement on the part of the larger companies to advance their wages 10 per cent?—A. Was that the fall of 1900?

Q. Yes; it was during the McKinley campaign. Do you not remember it was during the fall that McKinley ran his second time?—A. I have forgotten the exact time, but I remember the strike.

Q. It is the strike before the strike we speak of as the big one of 1901 and 1902?—A. Yes, sir.

Q. You remember it was adjusted in the way I have suggested?—A. Yes, sir.

Q. And you remember that the individual operators, first complaining that this adjustment of the differences between the miners and their employers was made without their participation in the consultations and arrangements, demanded, or if that is not the right word, at least urged upon the large companies an increase in the price to be paid for the coal that they were delivering, because of that increased cost of production due to that rise in wages. You remember that?—A. I remember that in a general way. That is largely a matter of hearsay, because some of these committees I was on, others I was not; so I can only answer that that was generally understood.

Q. Do you not remember that it was because of that demand, I will say—I do not mean it in an offensive sense—but, believing that they were entitled to a larger price for their coal, that the negotiations were entered into which resulted ultimately in the change from 60 to 65 per cent?—A. That is my recollection; yes, sir.

Q. And that, independent of the question whether the individual companies were bound by contracts or obligated to sell all the coal under the 60 per cent contract then in existence, or regardless of whether the contracts were for a proportion of the tonnage of the colliery without termination—that is, indefinitely—the result of these negotiations was this: That the larger companies agreed voluntarily to terminate the 60 per cent contracts, so called, and to enter into the 65 per cent contracts, one of which you have before you here representing the contract between the Pinehill and The Philadelphia and Reading Coal and Iron Company?—A. Yes, sir; that is correct, as I understand, in a general way. Of course, it does not cover all the details. There were some other minor reasons given also, but in a general way that is correct, as I understand it.

Q. But was not this your understanding of a condition which the larger companies imposed upon that increased price, namely, the securing, if it were possible, of a uniform standard of separation and of sizing of the product?—A. As I understand it, that was insisted on by both sides—mutually agreed on.

Q. But it is a fact that, prior to the 65 per cent contract, within your knowledge there was no uniform, general, recognized standard of preparation throughout the entire anthracite region?—A. Not as definite as those in these contracts, or nothing approaching it, I might say.

Q. Is not this the fact, that in none of the prior contracts, whether 60, 55, 50, or any other, labor basis or any other that you have ever been familiar with, in none of them was there definitely and expressly set forth, as there is in the 65 per cent contract, the percentage of refuse which must not be exceeded in the various sizes, and a definition of what was to constitute coal as a marketable commodity? Is not that true?—A. I think that is true. I do not remember ever seeing a contract containing any of these provisions or anything similar in definiteness up to the time these were executed.

Q. By the bye, somewhat on the side, may I not ask you this: You have spoken of the prior contracts calling for a payment that was to be based upon 50 per cent as an illustration of the average price of coal at tide. Is not this true, that that did not represent, in any contract with which you were familiar, the average price of all the coal sold at tide, but invariably was based upon the average price of certain particular designated companies in the contract?—A. Most of the contracts that I was familiar with were that way, but my impression is—of course, it is only a recollection, that may be wrong—that there were contracts that based that 50 per cent on one or two other companies besides the party taking the coal.

Q. I think you are quite right about that, perhaps you did not quite grasp my question. What I meant to ask you was this: Prior to this form of contract, now known as the 65 per cent contract, this is true, is it not, that there were no contracts with which you are familiar that fixed that percentage upon the average price of all the anthracite coal shipped to tide-water points?—A. That is true, as far as my recollection goes.

Q. Then these negotiation as you have said, resulted in the 65 per cent contract. To take up the Pinehill by itself for just a moment, can you tell us when you acquired the lease of The Philadelphia and Reading Coal and Iron Company's lands, they being lessors of the Pinehill?—A. They were acquired at the time of the execution of the first contracts by our predecessors.

Q. Can you give me any idea of the time?—A. About ten or twelve years ago. I have been connected with Pinehill just about ten years, actively, I mean, financially and otherwise, and I think that the colliery and company were in existence about two years prior to that time, so that, without having the papers, I would guess it was about twelve years ago that those Reading leases were made. Some of them Mr. Luther gave me, additional leases of course, five or six years ago.

Q. Speaking of those with which you are familiar by personal participation in the negotiations these were coal lands which, as you understand it, could be more economically mined from the operation you were associated with and the lands in a sense associated with that operation?—A. Yes.

Q. And they leased them to you and, as a part of the consideration, it was provided that the coal manufactured out of those lands was to be delivered and sold to The Philadelphia and Reading Coal and Iron Company—is that right?—A. That is correct.

Q. The coal which you acquired, by lease or otherwise, from the lessor, whoever it was—Stickney & Conyngham—were those leases acquired prior to your association with the Pinehill or subsequent?—A. The same way, partly prior and partly subsequently.

Q. Can you give me the name of the lessor of those lands which you speak of as the Pennsylvania lands?—A. I would have to get——

Q. You do not recall?—A. They do not go by the name of the

parties, and I should have to give you the technical names without associating the owners with them and give no information at all.

Q. Can you tell whether they were individuals or whether they were a coal company?—A. They were nearly all individuals.

Q. At the time those leases were made, was the understanding between you and the lessors, whoever they were, that you should sell the coal to the Susquehanna Coal Company or Stickney & Conyngham?—A. Stickney & Conyngham; yes, sir.

Q. This 65 per cent contract which you have had occasion to look at yourself in connection with your examination by the counsel for the Government, I want to ask you whether that contract is a mere device entered into by you with The Philadelphia and Reading Coal and Iron Company to stifle competition and create a monopoly in the sale of anthracite coal, or whether it is not a bona fide contract entered into in good faith by you, and, so far as you know, by The Philadelphia and Reading Coal and Iron Company, for the sale and delivery of the tonnage which it purports to cover at the Pinehill Coal Company's operation in Schuylkill County?—A. I have not supposed it was a device. I thought it blended into the purpose of trying to make money in the colliery, by us at least.

Q. You can fairly say it is a bona fide contract for the purchase and sale of the coal?—A. Absolutely.

Q. And the coal is delivered by you to The Philadelphia and Reading Coal and Iron Company's designated consignee at your colliery?—A. Yes, sir.

Q. It is a matter of no concern or interest to you what becomes of that coal after your delivery of it on board the cars?—A. We have nothing to do with it, except I must qualify that by the statement that up to this time we have not taken from the free lands under lease to us, an amount of coal equal to the shipments on our own account. That is, we have shipped to Norton & Co., in Philadelphia, our own commission agents or consignees, you might say—we call it Pinehill account—an amount equal to the quantity taken from the Reading and Pennsylvania lands. The companies recognizing, I suppose, our misfortunes—we had a very disastrous fire there—have never objected, in fact, have permitted us to sell on our own private account a considerable quantity of coal taken from their lands, but, of course, shipped over their roads, as the contract provides; whereas they might have restricted us, if they had chosen, I presume, and prevented our shipping any coal from their lands to anybody but their own consignees. I want to say that as a matter of fairness, because they certainly have been exceedingly fair with us in matters of this kind. It was one of the things they did not have to do. I think they have done it because they recognized that we had gotten into trouble.

Q. I want to call your attention to a short extract from the report of the Anthracite Strike Commission. If you will permit me, I will read it to you: "We were impressed with many important features regarding the anthracite industry that are not generally known, and particularly with the capital required in the development of the mines

and the production of the coal, as well as with the great waste occurring and the cost of handling the output under present conditions in the preparation of the marketable sizes. Sinking shafts, fitting them with hoisting machinery, driving gangways, opening chambers, pumping plants, which must be run continuously, ventilating machinery that the men may work with safety and a reasonable degree of comfort, grading roads, planes, and slopes, cost of mules and carts, the installation of the machinery required in hauling the product to the breaker, where the coal is finally prepared for market—necessitate a large investment of capital. The breakers also, equipped with the necessary machinery, are expensive. They are usually built of wood and require constant repairs. The cost of opening a colliery, with its equipment, varies from $200,000 to $750,000, which must be returned by the time the coal is exhausted, or the investment results in loss, as the plants are worthless when all the coal has been mined." I want to ask you whether that does or does not accord with your knowledge of the expenses incident to these features of the preparation of coal and the installation of plants and other matters I have called your attention to here, and whether it does not accord with your personal experience in connection with various coal companies you have named this morning as having been associated with?—A. It does, absolutely. Of course it is nobody's business, but we have no secrets to cover, and I will simply say that the Pinehill represents a cash outlay up to this time of between $750,000 and $800,000, all of which we must get back out of that coal, or never get it, with the interest and the actual expense.

Q. So that the price which you receive for coal, if the strike commission understand the situation, the public generally do not appreciate, is caused by the various items which are enumerated in this extract from that report, and perhaps others which are not there designated; is not that true?—A. I think that is true; yes, sir.

By Judge CAMPBELL:

Q. I would like to ask you if you are particularly familiar with the movement of the coal produced at Pinehill colliery; whether the tracks which are connected immediately with the colliery are tracks of both the Pennsylvania Railroad system and the Philadelphia and Reading system or of the Philadelphia and Reading alone?—A. From Pottsville up, is it not? I think it is from Pottsville up.

Q. From Pottsville up?—A. From Pottsville up they are owned entirely by the one company.

Q. The Philadelphia and Reading?—A. The Philadelphia and Reading; yes, sir.

Q. The coal that is shipped by way of the Pennsylvania Company has to be carried to a point of connection with the Pennsylvania tracks over the Philadelphia and Reading tracks?—A. Yes, sir.

Q. What proportion of the freight coal, so called, about, on a general average, goes to market, ultimate markets, solely over the Philadelphia and Reading Railway Company, or partly over the

Philadelphia and Reading Railway Company and partly over the Pennsylvania lines?—A. I do not think I could answer that.

Q. It is not important; just give it roughly.—A. I would not like to answer it now, because I have not looked it up sufficiently. I had our bookkeeper make up a statement, but it does not cover that question, I think.

Q. It is not at all important. Just state that you do not recall definitely.—A. No, sir; I do not recall exactly.

Redirect examination by Mr. TODD:

Q. Did not the agitation among the independent producers for either a lower freight rate or a higher price for their coal, whichever you choose to call it, begin a long time before the increase in the wages of the miners in the fall of 1900?—A. It certainly did. There has been an agitation ever since I have been in this country, continual almost, on those lines. But, of course, as to that special line of demand, I can not say exactly.

Q. As I understand, you assented to the statement of the counsel who was examining you, that the railroads or railroad coal companies voluntarily canceled some 60 per cent contracts. Do you know whether they voluntarily canceled them or whether they were expiring of their own terms, or not?—A. I think some were expiring, as I have stated before, but others were changed at that time, even though they were not expired. I know that was true in some cases.

By Judge CAMPBELL:

Q. How is that with respect to your contract with The Philadelphia and Reading Coal and Iron Company—that was not allowed to expire?—A. Yes; I think that was a short-term contract and expired. I referred to it as one which I think expired. Of course, I have had very little time to go through these papers.

By Mr. TODD:

Q. When you spoke of being compelled to sell your interest in the Lackawanna Coal Company at a sacrifice, what did you mean?—A. I wanted to qualify that a little any way. It was for partly personal reasons. I had some gentlemen associated with me that needed the money, and that amount of money at that time was better than twice as much perhaps would have been later. Of course, I wanted the money myself. Another circumstance was that the Simpson & Watkins fifth interest, they absolutely had agreed to sell, I guess before we ever heard of it at all. That broke up our partnership. Then the other interest was an estate. The original owner was dead and they were willing to sell. Personally, I have always been for holding the anthracite coal properties, and would not have sold if it was not for that. I did not mean that any company forced me to sell.

Q. I did not understand that any railroad or coal company forced you to sell, but I drew the inference from what you said that some of your associates——A. I meant really that circumstances obliged me.

There were five separate interests; one had already sold before I knew anything about it; Simpson & Watkins had already sold.

Q. Their interest was four-fifths?—A. No; one-fifth. Another part was owned by my son and another young man, who had only been in a short time and they made a good profit. They were both young men and glad to sell. Another, as I said, was owned by an estate, and I did not want to stand in the way of selling.

I desire to make a correction in my testimony. I think I stated early in my testimony that my Susquehanna and Western employment and their coming in here was in 1875. I think it was five or six years later. It was in the eighties.

LUTHER C. SMITH, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. TODD:

Q. Where do you reside?—A. Selinsgrove, Pa.

Q. What is your present occupation?—A. Out of occupation just now, resting.

Q. You were once an officer of Coxe Brothers & Co. and of the Delaware, Susquehanna and Schuylkill Railroad, were you not?—A. Yes, sir.

Q. What office did you hold in those companies?—A. I think it was in 1895 I went with the Coxe people as superintendent of the Delaware, Susquehanna and Schuylkill Railroad. Afterwards they added the position of manager of the Coxe Iron Manufacturing Company. They finally added to the position manager of the Coxe Brothers & Co.'s coal interest, the Cross Creek Coal Company.

Q. About when was that?—A. I left there in 1905; I suppose possibly in 1900.

Q. So in 1900 you were manager of Coxe Brothers & Co., were you, as well as superintendent of the Delaware, Susquehanna and Schuylkill Railroad; is that correct?—A. Yes, sir; simply gave me the title of manager, and that title stood for everything, railroad and shops.

Q. Before your connection with the Coxe Brothers or their railroad, were you connected with the anthracite industry?—A. Not any more than as superintendent of the Jefferson division of the Erie Railroad.

Q. How long were you superintendent of the Jefferson division of the Erie Railroad?—A. Possibly a year and a half—let's make it a year.

Q. Before that?—A. I was superintendent of the Tioga Railroad. It is part of the Erie system.

Q. Did you enter the anthracite regions?—A. No, sir; that ran from Elmira to Hoytville.

Q. Coxe Brothers & Co. promoted and furnished the funds for the building of the Delaware, Susquehanna and Schuylkill Railroad, did they not?—A. The Delaware, Susquehanna and Schuylkill Railroad was built before my connection with that company, but I can assure you there is no question but what they furnished the funds.

Q. At the time you were connected with it, was Coxe Brothers & Co. a corporation then or a firm?—A. Yes; it was known as Coxe Brothers & Co. (Incorporated).

Q. Did the corporation of Coxe Brothers & Co. own the stock of the Delaware, Susquehanna & Schuylkill Railroad at that time?—A. That is my understanding; yes, sir.

Q. What collieries were reached by the Delaware, Susquehanna and Schuylkill Railroad?—A. You mean what collieries turned their product over to this railroad?

Q. What collieries were located on the Delaware, Susquehanna and Schuylkill Railroad, or were near enough to it to be served by it in the ordinary course of business?—A. Near enough to be served but not served, do you mean?

Q. You can divide your answer into two parts. You can first name the collieries which were on it and which were served by it, and then you can name those which could be served.—A. The Delaware, Susquehanna and Schuylkill Railroad was built for the purpose of taking care of the Coxe collieries, composed of Drifton, Eckley, Stockton, Beaver Meadow, Tomhickon, Derringer, and Oneida. In addition to that, the Delaware, Susquehanna and Schuylkill Railroad handled the product from what we will call the Pardee operations.

Q. There are several of those, are there not?—A. There are two firms; A. Pardee & Co. I believe was one of the companies, and C. Pardee I think was the other.

Q. The product of the collieries of those two firms was shipped over the Delaware, Susquehanna and Schuylkill Railroad?—A. Yes, sir; their collieries consisted of Lattimer, Harwood, and Hollywood.

Q. Can you give the collieries of either of those two firms separately?

Judge CAMPBELL. These collieries were not named by Doctor Howe and they must therefore be the C. Pardee collieries.

By Mr. TODD:

Q. You yourself do not know?—A. I do not know.

By Judge CAMPBELL:

Q. Do you recall a colliery named Lehighton?—A. No such colliery in our location.

By Mr. TODD:

Q. Are there any others besides Lattimer, Harwood, and Hollywood?—A. No, sir; for instance, I might explain that while I call these collieries, they were really only two breakers, I think, at the time. Lattimer breaker took the product from several collieries; we will call them Lattimer No. 1, 2, and 3, if you please—underground workings which went through the coal. Drifton and Hollywood had no breaker, if I recollect rightly. Harwood did have a breaker. So, while there were several mines, there were really only two breakers.

Q. Those collieries which you have named, the first series being collieries which belonged to Coxe Brothers & Co., and the last series

of three being collieries which belonged to one or the other of the Pardee firms, were all reached by and served by the Delaware, Susquehanna and Schuylkill Railroad; is that correct?—A. That is right.

Q. Do you recall, roughly, the annual tonnage which was carried from those collieries by the Delaware, Susquehanna and Schuylkill Railroad?—A. For your purpose, I think, if I state a million and a quarter I would be about right.

Q. From all of those collieries?—A. Yes, sir.

Q. Coxe Brothers as well as the Pardees?—A. Yes, sir; that would have made the probable yearly shipment over the Delaware, Susquehanna and Schuylkill Railroad.

Q. There were some other collieries, were there, which, while not served by the Delaware, Susquehanna and Schuylkill, were near enough to it to be served in the ordinary course of business, if their owners had so desired?—A. Yes; of course, you will understand that in each instance there would have had to have been more or less track run to reach them. There were cases where the distance would not have been unreasonable.

Q. Can you name the most of those?—A. G. B. Markle & Co.'s Highland breaker; G. B. Markle & Co.'s Jeddo breaker (rather known as Highland No. 5), located at Jeddo mine; people call it the Jeddo breaker; G. B. Markle & Co.'s Oakdale breaker. Then the Wentz people had a breaker. They had a breaker located at Hazelbrook; I do not know as they had any particular name for it. In those days the Van Wickle operations at Melonsville and Coleraine had two breakers. I think that covers all, with the possible exception of a little affair that was built during the time, which I am not sure was a going concern. That is, it was not of any magnitude at the time, and I forget the names of the operators.

Q. Which railroads did the Delaware, Susquehanna and Schuylkill connect with?—A. They connected with the Lehigh Valley.

Q. At what point?—A. At a number of points—Drifton, Stockton, Harleigh Junction, Oneida Junction, Lumber Yard; those were all the connections I can think of at this time.

Q. What other railroads did it connect with?—A. It connected with the Pennsylvania Railroad at Gum Run; connected with the Philadelphia and Reading Railroad at Roan.

Q. It does not connect with the Central Railroad of New Jersey?—A. It did connect with the Central Railroad of New Jersey at Drifton, but that branch or portion of it was abandoned, and for some years now there has really been no connection with the Central Railroad of New Jersey.

Q. You mean by that that it is not used?—A. It is not used, and can not be used. It would require a rebuilding of the branch to make it fit for use.

Q. The branch was originally built there, was it?—A. The branch originally ran into Drifton, and my recollection is that when I first came to Drifton they ran one local freight a day, or every other day; something like that—did very little business.

Q. How near does it go to Drifton at the present date, or at the time you left the company?—A. I do not believe I know. I will have to say I can not tell.

Q. Do you know when they stopped using the connection with the Central Railroad of New Jersey at Drifton?—A. No, sir; but I should say it was all of seven or eight years now.

Q. Do you know why they stopped using it?—A. No; any more than my judgment told me that there was insufficient business to warrant them in keeping it up. A car of freight every day or so would not pay for its maintenance.

Q. So coal or any other freight could have been delivered by the Delaware, Susquehanna and Schuylkill Railroad to these other railroads which you have named at the junction points which you have named for through transportation, could it not?—A. Oh, yes; and was delivered. In other words, we interchanged freight at Gum Run with the Pennsylvania Railroad—other than coal, I am speaking of. Coal was the principal interchange, of course. We interchanged some little freight with the Philadelphia and Reading at Roan. That was their scale station. It was where all the coal was weighed that went to Perth Amboy. We exchanged quite a bit of freight with the Lehigh Valley at Stockton Junction.

Q. But you exchanged no freight, as a matter of fact, with the Central of New Jersey at Drifton after, I believe you said, seven or eight years ago—you do not know the date any more definitely than that?—A. No, sir; but I will say I do not believe that we ever exchanged any freight with the Central Railroad of New Jersey during my time.

Q. But it was possible?—A. It was possible until the time that they abandoned the branch.

Q. When the branch was abandoned, do you mean that the tracks were torn up or that it was just allowed to fall into disuse?—A. No; my recollection is—the rails, I guess you mean—the rails and ties were there; the ties, of course, entirely rotten, and the track was in such a bad shape that it would have been entirely out of the question to run an engine over it.

Q. I say it was just allowed to fall into disuse and gradually become worthless?—A. Worthless, as a matter of operation; yes, sir.

Q. But it was not torn up at a single stroke, and for some time after the Delaware, Susquehanna and Schuylkill, as a matter of fact, ceased exchanging freight with the Central Railroad of New Jersey, it could have done so over that track before it did become worthless, could it not?—A. Oh, yes.

Q. For how long, do you suppose?—A. I do not know.

Q. I do not mean exactly.—A. I can not tell you. I was with the Coxe people ten years. I understand the branch that ran in there is a very old one and existed for years—possibly the first road into Drifton.

Q. How near to the tracks now in operation, or how near did the tracks in operation at the time you were with that company go to Drifton?—A. You mean the Central Railroad of New Jersey?

Q. No; I mean the Delaware, Susquehanna and Schuylkill.—A. That is one of the terminal points of the road, Drifton.

Q. I am afraid I have misapprehended some of your testimony. Whose branch was it that fell into disuse? The Central Railroad of New Jersey's?—A. That was the Central Railroad of New Jersey's.

Q. It was their branch which fell into disuse?—A. Yes, sir.

Q. Do you know the point on the main line of the Central Railroad of New Jersey from which that branch which extended to Drifton started?—A. I do not. It runs down to country I am not familiar with. I think I made inquiry once and found that they did run some little distance up, a branch, to a sandpit down about what is known as Drifton Scales. I can not tell you the distance, and never paid sufficient attention to it to bring it to my memory.

Q. So the Central Railroad of New Jersey does not now operate a line reaching to Drifton?—A. No, sir.

Q. And did not at the time you were connected with the Delaware, Susquehanna and Schuylkill?—A. No, sir.

(No cross-examination.)

JAMES S. MCANULTY, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. TODD:

Q. Will you please give your address and tell us briefly your connection with the anthracite industry?—A. I live in Scranton. My first connection with the coal business was as secretary and treasurer of the Connell Coal Company, an operation substantially owned by my father-in-law, Mr. William Connell. That was, I think, some time in 1900.

Q. That company was subsequently, or the stock of it, was subsequently sold to the Lehigh Valley Railroad or The Lehigh Valley Coal Company, was it not, do you know?—A. The Lehigh Valley Coal Company.

Q. What coal operation were you next connected with, if any?—A. I was connected subsequently to that with the Melville Coal Company. That was at the same time that I was connected with the Connell Coal Company. Then with the Connell Anthracite Mining Company, an operation at Bernice, in Sullivan County, Pa.

Q. What was your office with those two companies?—A. I was treasurer of the Melville, and I am secretary and treasurer of the Connell Anthracite Mining Company.

Q. Is the Melville Coal Company still in existence?—A. It is; yes, sir.

Q. But you no longer are an officer of that company?—A. I am not sure whether I am the secretary of the Melville Coal Company as such. I think possibly I may be regarded as such; I am not actively.

Q. Do you know whether any of the capital stock of the Melville Coal Company is owned by any of the anthracite-carrying railroads

or coal companies?—A. I am not sure. You mean the transportation companies?

Q. Yes; the transportation companies.—A. No, sir.

Q. Or coal companies whose stock is owned by the transportation companies?—A. No, sir.

Q. Does it sell its coal under contract?—A. I believe it sells its coal under a contract to The Lehigh and Wilkes-Barre Coal Company; that is the Melville.

Q. Explain the relation of the West End Coal Company and the Melville?—A. The stock of the Melville Coal Company and the stock of the West End Coal Company is held in trust as security for a collateral trust mortgage, and the operating part of those two collieries is the West End Colliery Company, a New Jersey corporation.

Q. The West End Colliery Company?—A. Yes, sir.

Mr. WARREN. One of the defendants here.

By Mr. TODD:

Q. Is the West End Colliery Company a corporation distinct from the West End Coal Company?—A. The West End Colliery Company owns all the capital stock, or substantially all, of the West End Coal Company and the Melville Coal Company.

Q. You are familiar, are you not, with the negotiations between the anthracite operators' association on the one side and the carrying companies on the other, or the coal companies controlled by the carrying companies, which resulted in the so-called 65 per cent contract?—A. Somewhat familiar, yes, sir; I would rather like to explain my relation to that situation. Mr. William Connell, my father-in-law, was one of the committee, or a member of the committee appointed by the individual operators to negotiate those contracts, and he was in Washington a great deal of the time.

By Judge CAMPBELL:

Q. Being a member of Congress?—A. Being a member of Congress; yes, sir. I think at all of those conferences I was either present with him, or, when he was not there, attending, not officially in his place, but merely to convey to him information with reference to the progress of the negotiations and to make any suggestions that he might want to have conveyed to the other members of the committee. That was my relation.

By Mr. TODD:

Q. But you were present at the deliberations between the committee of the operators on the one hand and the carrying companies or their coal companies on the other?—A. I was.

Q. Who besides yourself was present on the part of the operators?—A. Dr. H. M. Howe and Mr. M. S. Kemmerer.

Q. Who on the part of the carrying companies or their coal companies?—A. I would not say that at all of the sessions the names I

mentioned were present, but they were present at most of them—Mr. George F. Baer.

Q. Representing whom?—A. The Philadelphia and Reading Coal and Iron Company; Mr. John B. Garrett, representing The Lehigh Valley Coal Company; Mr. Truesdale, representing the Delaware, Lackawanna and Western Railroad Company; Mr. George B. Cumming, I think representing the Erie, and I think at some of the meetings Mr. Thomas.

Q. Mr. E. B. Thomas?—A. Yes, sir; then representing the Erie, I think.

By Mr. WARREN:

Q. You mean the companies which the Erie were interested in, the Hillside Coal Company and the Pennsylvania Coal Company?—A. Yes, sir. There may have been others there. I do not recall any more at the time being.

By Mr. TODD:

Q. Just what was the subject of discussion at those meetings?—A. It was negotiations looking to the completion of the contract for the sale of the operators' coal to the transportation—I call it transprtation—companies, or to the coal companies.

Q. Which they controlled?—A. Which they controlled.

Q. Those conferences lasted for a considerable length of time, did they?—A. For some time; yes, sir.

Q. Where were most of the meetings held; do you happen to remember?—A. Most of the meetings were held in Philadelphia; I think at the offices of The Lehigh Valley Coal Company.

Q. Do you recall when the first meeting took place?—A. I can not remember, but I imagine some time possibly in October.

Q. 1900?—A. 1900; yes, sir; it may have been earlier than that, but I think they commenced in October.

Q. A draft of a proposed contract was settled upon, was it not, by both sides?—A. Yes, sir.

Q. What was done then with that proposed draft of the contract?—A. I can not say anything, but assume what was done with it.

Q. What was done by your committee after the conclusion had been reached?—A. I do not know that there was any—I can not recall that there was any formal action taken by the committee.

Q. They made known in some way, did they not, to the anthracite operators' association, either at a regular meeting or to the members of the association individually, what the result of the deliberations was?—A. Yes, sir.

Q. And sent them, did they, a copy of the proposed contract?—A. I understood that each received a copy and was made entirely familiar with the terms and conditions of the proposed contract for the sale of the coal.

Q. As an exhibit to the Government's petition in this case, there is a form of contract which is marked Exhibit A. Will you look

through that and see if, in all substantial respects, it embodies the provisions which your committee agreed upon?—A. (After examining contract.) Yes, sir; I should say that was substantially it.

Q. This so-called 65 per cent contract was not entered into by all of the operators who have subsequently, in fact, entered into it at the same time, was it?

Judge MOOT. I do not object to your asking him what contracts he did enter into and when, but I do not assume that Mr. McAnulty knows about all the contractors in the coal region, or even in this coal region.

Mr. TODD. I am only asking for what he knows. I am simply asking him as one of the trade, whether he knows.

By Mr. TODD:

Q. I ask you, do you know whether the contracts which were executed in this form by various independent operators were executed at the same time, or from time to time thereafter?—A. I do not know of any of the contracts, from my knowledge, that were executed as a result of this negotiation. The Connell Coal Company never made a contract. They sold their colliery before a contract could have been made, or was made, at least. The Connell Coal Company sold its operation to The Lehigh Valley Coal Company, so they never entered into a contract, and that would be the only concern that I would be officially related to in the execution of a contract.

Q. I did not mean to limit the question to the contracts with which you would have an official connection, but you can testify as to your knowledge outside of that. Do you know, as a trade condition, that a number of operators entered into the contracts in this form?

Judge MOOT. I object to the trade condition, and I insist that you put the question to Mr. McAnulty as a lawyer should, whether he ever saw one of these contracts executed, or one of them after it was executed.

The WITNESS. Not that I recollect, have I seen any.

(Question read.)

By Mr. TODD:

Q. As a part of your general knowledge of the conditions in the anthracite trade?—A. I would say that they did.

Q. Was it a part of the agreement reached between the committee of the anthracite operators on the one hand and of the railroad companies or their coal companies on the other that this contract, when it was entered into by any particular operator, that its benefits should begin as of November, 1900?—A. I can not testify as to that point. I do not remember just the date.

Q. Do you remember there was some discussion as to whether those contracts should not take effect at a date anterior to the time they were actually entered into?—A. That is my impression; yes, sir.

Q. You do not remember specifically that the date was November, 1900?—A. I do not; no, sir.

Q. Do you remember anything about the date?—A. I can not recall that, as to the date, as that was no part of anything I heard in those negotiations. I do not know as that was brought into the negotiations at all; I do not remember that it was.

Q. Did I misunderstand you just now? I thought you said you did remember that there was a discussion of the committee, in the meetings between the two committees, with reference to the time when these contracts should take effect, that they should be retroactive up to a certain point.—A. If I said that, I fail to remember that condition now, and I want to recall it.

Cross-examination by Mr. WARREN:

Q. You said that the only company with which you had official connection at or about the time that these contracts were negotiated for was the Connell Coal Company, and that it never entered into any such contract. Do you not recall that, as secretary of the Melville Coal Company, you executed, as such, one of these contracts for that company with The Lehigh and Wilkes-Barre Coal Company, the date of it being the 1st of June, 1901? I show you the exhibit attached to the answer of the Melville Coal Company in this case, the printed exhibit, the attestation clause of which you will see bears your name as the secretary of the company.—A. My act there was so perfunctory that I had forgotten all about it.

Q. Calling your attention to it now, does it not refresh your recollection so as to enable you to say you were a party to the execution of that contract for the Melville Company?—A. Yes, sir.

Q. You have said that your impression is that the negotiations in which you participated at The Lehigh Valley Coal Company's office in Philadelphia started about October of 1900?—A. That is my impression.

Q. Let us see if I can refresh your recollection as to that. You recall the strike of 1900 during the McKinley campaign?—A. Yes.

Q. The result of which was the raising of the miners' wages 10 per cent and their resumption of work just prior to the election?—A. Yes, sir.

Q. Do you not recall that that strike continued through a portion of it—that is, all of October—and that they resumed their work about the 1st of November, and within a very few days of the election? Do you not remember that now that I bring it to your mind?—A. Yes.

Q. Then, does not that refresh your recollection so as to enable you to recall that that 10 per cent increase to the miners was granted by the larger companies—that is to say, the coal companies controlled by the transportation companies—without consultation with, or at any rate without the acquiescence of, the individual coal companies in any such granting of the miners' demands? Do you not remember that?—A. I remember that.

Q. And do you not remember that it was after that settlement between the miners and the larger coal companies that the individual

operators got together and said, "Now, the larger companies have granted the miners an allowance of 10 per cent, an increase of 10 per cent, which is, of course, a larger burden upon us in the matter of the cost of the preparation of coal, and we therefore insist that there should be an allowance made to us by an increase in the price to us by those companies for our coal?" Do you not remember that, as a part of the evolution of this matter preceding these negotiations, and that thereupon a committee was appointed, your father-in-law, Doctor Howe, and Mr. Kemmerer, to take up the proposition with those larger coal companies and see whether they would not grant such an increase?—A. I remember that that was a very important factor in the matter, an advance on the part of the larger companies of 10 per cent to the miners, and therefore the consequent increase in the cost of the coal to the individual operators.

Q. But was it not one of the arguments that was used by that committee to Mr. Baer, Mr. Truesdale, and others to prevail upon them to make this increase as between 60 and 65 per cent?—A. It was a very important one. Of course the individual operators, from the time they had a 45 per cent or a 50 per cent contract, were always anxious to get more money for their coal. They never were satisfied, as far as that is concerned.

Q. But what I mean is, that one of the levers which this committee representing the individual operators used in their conferences with Mr. Baer and others in your presence was this, that the larger companies had made this increase to the miners, which of course would have to be concurred in by the individual operators, whether they acquiesced in that increase or not, and they ought to be protected by the larger companies, because the larger companies had made that increase without their previous acquiescence in it; is not that true?—A. Yes, sir.

Q. Do you not remember that as to some at any rate, if not all of the independent operators, the contracts then upon a 60 per cent basis had some time to run—were not expiring, in other words?—A. That is my impression, that they had not expired either by limitation of time or by the limitation as to tonnage.

Q. And still your committee represented to Mr. Baer, Mr. Truesdale, Mr. Thomas, and others that, in view of this very large increase in the cost of mining, due to the increase in wages to the miners, that they ought to make this change in the price to be paid for the coal, independent of the question whether their contractual obligations required it or not; is not that true?—A. That is true; yes, sir.

Q. And the outcome of these negotiations was their acquiescence in that request on your part, and their agreement to raise it from 60 to 65 per cent? Upon your representations they finally agreed to that, did they not?—A. Yes, sir.

Q. But did they not insist that, as a condition of that agreement, there should be an entirely different and better system devised as to the preparation and standardization of coal?—A. That was one of the features of the contract; yes, sir.

Q. I want to ask you now, do you not remember that in these negotiations the matter of securing this uniform preparation and the adjustment of the proportion of slate, bone, and refuse that was to be allowed to pass by inspection occupied the greater part of the time that was consumed during these months of conferences?—A. It did; yes, sir. As a matter of fact, simply an increase in the price the operator was to receive for his coal was not the only feature of the contract, but it was a general readjustment of the whole preparation and the defining of what bone was, and what slate was, and mesh, and all of the features that entered into the contract as concluded and as accepted here.

Q. And finally appearing in the draft to which the Government's counsel has called your attention?—A. Yes, sir.

Q. You were a matter of two or three months in those negotiations, were you not?—A. Yes, sir.

Q. You remember that this Independent Operators' Association, to which your attention has been called, continued its operations several years after those conferences were terminated, do you not?—A. It continued; it was not dissolved; no, sir; not to my knowledge.

Q. And was represented before the strike commission, do you not recall?—A. Yes, sir.

Q. Was it not also represented in the negotiations which led up to the renewal of the three-year agreement expiring April 1, 1906, which started April 1, 1903, and which was the agreement which the strike commission fastened both upon the operators and the employees?—A. I can not recall that. I have no personal knowledge of that.

Q. Let us see if you have not. You know W. L. Connell very well?—A. Yes, sir.

Q. Do you not know he is to-day a member of the conciliation board which the Anthracite Strike Commission constituted—you know that, do you not, that he is on that board to-day?—A. Surely.

Q. And he has been for six years. That is to say, he has been since the award of the strike commission went into effect, April 1, 1903, down to this date, November, 1908; and do you not know as a fact that he is there as the representative of the individual, independent operators?—A. Yes, sir.

Q. Then there is to-day on the conciliation board a representative of the independent operators?—A. Yes, sir.

Q. And the association which named him?—A. I think the association named him. I can not testify as to that.

Q. Did you not attend any of the meetings of the independent operators?—A. I do not believe I did at that time. The Connell Coal Company sold out their operations and their subsequent meetings I did not attend.

Q. The Melville Coal Company and the West End Coal Company are operated, as you say, by the West End Colliery Company?—A. Yes, sir.

Q. The Melville Coal Company sells its coal to The Lehigh and Wilkes-Barre Coal Company under the 65 per cent contract, so-called, to which I have called your attention as a part of the exhibit?—A. Yes, sir.

Q. The West End Colliery Company sells coal to the Susquehanna Coal Company; does it not?—A. Yes, sir.

Q. Therefore that company—which is an entirely independent company; is it not?—A. The West End Colliery Company?

Q. The West End, the Melville, and the West End Colliery all are entirely independent collieries?—A. Three independent collieries; yes, sir.

Q. But what I mean, they are independent of any ownership or control, directly or indirectly, by any of the coal companies which are in turn controlled by the big railroads?—A. Yes, sir; that is the fact.

Q. Is it not true that the West End Colliery Company sells its coal to the Susquehanna Coal Company under a 65 per cent contract?—A. I believe it does.

Redirect examination by Mr. TODD:

Q. Did not the agitation among the independent operators for an increased price for their coal, or for a lower freight rate, whichever way you chose to look at it, begin long before this increase in the wages of the miners in the fall of 1900, which has been referred to?

Mr. WARREN. I object because it is clearly incompetent and hearsay testimony on the part of this witness, and therefore ought not to be asked.

A. My impression is that there was an agitation in that direction previous to that time.

Q. And a considerable time previous to that time?

(Same objection.)

A. Considerable; what do you mean by that?

Q. Several years.—A. Not as long as that; no, sir; I would not say that. I would say some months previous to that time. As to the length of time, I do not know.

Q. But it was before then?—A. Yes; on the general assumption that they were never satisfied with the prices they were getting, and they were always glad to agitate an increase in price, if they had any pretext whatever.

Q. This increase of the wages of the miners was simply another argument with them?—A. It was a very strong and impressive argument with the transportation companies. The coal was costing the operator more money, and he had to get more money for it if he was getting the same profit he had been previously getting.

Recross-examination by Mr. WARREN:

Q. But the committee to which you have referred here in your testimony was appointed practically immediately prior to their taking up the negotiations with Mr. Baer, Mr. Truesdale, and others,

was it not?—A. Immediately following the granting to the miners of that increase of 10 per cent?

Q. Yes.—A. I can not say that. I could get the date, probably, by looking up the records, but as to that being the time when that committee was appointed, I can not testify to that. I do not know.

Q. Have you any knowledge of its having any existence as a committee appointed to negotiate with those presidents to secure a change from 60 to 65 per cent until after the termination of what is known as the 1900 strike?—A. Of course you are fully aware that there was the Anthracite Coal Operators' Association in existence long previous to that time.

Q. I am not speaking of the association.—A. As to the date of the appointment of this committee I can not testify. I do not know.

Q. That being true, I ask you, Have you any knowledge or information of the creation of the committee by that association for the purpose of negotiating with the presidents for a change from the 60 to 65 per cent until after the termination of that 1900 strike?—A. I do not know. I do not know whether it was before or after; as to the date I can not tell. I can find it, though.

(Adjourned until Tuesday, November 24, 1908, 10.30 a. m., at district attorney's office, Post-Office Building, Philadelphia, Pa.)

Met pursuant to adjournment at Philadelphia, Pa., Tuesday, November 24, 1908.

Present: The Examiner; James C. McReynolds, esq., and G. Carroll Todd, esq., for the United States; and J. D. Campbell, esq., Adelbert Moot, esq., Everett Warren, esq., J. H. Torrey, esq., and Mr. Welles, for various defendants.

LEWIS NEILSON, a witness for the plaintiff, recalled.

Direct examination by Mr. MCREYNOLDS:

Q. It appears from the stenographer's transcript of the testimony which you formerly gave that in reply to a question you stated that the Pennsylvania Railroad Company did not own a majority of the stock of the Northern Central Railway Company. You have indicated to us that that answer was incorrect, and you wished to correct it. Please make any correction that you desire.—A. It is incorrect. the Pennsylvania Railroad Company owns 54 per cent, in round numbers, of the Northern Central Railway Company's stock, and has owned over 50 per cent of it for about six years.

By Mr. TODD:

Q. When did the Pennsylvania Railroad Company acquire the ownership of the capital stock of the Summit Branch Mining Company?—A. I suppose you want me to answer with reference to the predecessor company. The Summit Branch Mining Company is the result of two reorganizations. The Summit Branch Mining Company is a company formed after the foreclosure of the Summit Branch Coal Company, which in turn was formed after the fore-

closure proceedings of the Summit Branch Railroad Company. The Pennsylvania Railroad Company acquired its interest in the Summit Branch Railroad Company in June, 1874. That was a majority interest. The Pennsylvania Railroad Company owns all of the existing company.

Q. Do you know since what date it has owned it?—A. Since the foreclosure, which was in December, 1901, I think. It was toward the end of the year.

ARCHIBALD F. LAW, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Where is your home, and what is your occupation?—A. My home is in Scranton, Pa. I am vice-president and treasurer of The Temple Iron Company.

Q. How long have you been connected with The Temple Iron Company?—A. Since the 1st of January, 1899, in various capacities.

Q. Prior to January, 1899, what was your business?—A. I was employed by Simpson & Watkins, in various capacities, from July, 1885, up to January 1, 1899.

Q. Were you a member of the firm of Simpson & Watkins at any time?—A. No, sir.

Q. In a general way, what were your duties while you were connected with that firm?—A. That of secretary and accountant, secretary of the various coal companies, and had charge of the accounts of the various coal companies controlled by Simpson & Watkins.

Q. You were not interested in the firm, I believe, as a partner, or in the profits?—A. Only as a stockholder in some of the underlying companies, a very small amount.

Q. Simpson & Watkins was a partnership, was it not?—A. Simpson & Watkins was a partnership.

Q. Who were the members and what was the business of the firm?—A. Clarence D. Simpson and Thomas H. Watkins. The business principally was mining and selling anthracite coal, and they also conducted what were known as company stores, one at each of the collieries, under the firm of Simpson & Watkins.

Q. How many collieries did Simpson & Watkins operate just prior to January, 1899?—A. Eight.

Q. Were the titles to those collieries in Simpson & Watkins, or was each colliery owned by some corporation and the stock of that corporation owned by Simpson & Watkins?—A. Each colliery was operated as a corporation, and the stock was principally owned by Simpson & Watkins.

Q. Point out on this map which is already in the record, and known as Ruley's map of the anthracite regions, the location of the collieries which were owned by Simpson & Watkins in 1898. [Map handed witness.]—A. All these collieries were located in the Wyoming region within 25 miles of the town of Scranton. This Wyo-

ming region among those who deal there is divided into two parts, the northern part called the Lackawanna and the southern part called the Wyoming. Pittston, about 9 miles south of Scranton, is the division line. The names and numbers of these collieries as shown by the Ruley map are as follows:

Northwest colliery, No. 5, 4 miles northwest of Carbondale. That is owned by the Northwest Coal Company.

The Edgerton colliery, No. 18, which is now abandoned. It was owned by the Edgerton Coal Company. It is 2 miles east of the borough of Mayfield.

Sterrick Creek colliery, No. 25½, 3 miles south of Carbondale, located in the town of Jessup, 9 miles north of Scranton.

Lackawanna colliery, No. 32, located in the borough of Blakeley, 5 miles north of Scranton. It is owned by the Lackawanna Coal Company, Limited.

Babylon colliery is between collieries 81 and 100, on the Ruley map, but not numbered itself. It is located in the borough of Duryea, about 3 miles north of Pittston, 7 miles south of Scranton. It is owned by the Babylon Coal Company.

Mount Lookout colliery, No. 107 on the map, located in the borough of Wyoming, 2 miles south of Pittston, and is owned by the Mount Lookout Coal Company.

Forty Fort colliery, No. 151 on the map, located in the borough of Swoyersville, which is 7 miles south of Pittston. The Forty Fort colliery is owned by the Forty Fort Coal Company.

Harry E. colliery, No. 152, in the borough of Swoyersville, which is about 8 miles south of Pittston. It is owned by the Forty Fort Coal Company. It is about 4 miles from Wilkes-Barre.

Q. When was the Edgerton colliery abandoned?—A. About two months ago. We stopped mining coal there last December. The colliery is exhausted.

Q. If I understand you properly, each one of these colleries was owned by a separate corporation, and the majority of the stock in each one of these corporations was owned and controlled by Simpson & Watkins?—A. That is correct.

Q. The lines of what railroad systems reach these various collieries? If more than one system of railroad reaches one colliery, please state it.—A. The Northwest colliery is located on the Jefferson branch of the Erie Railroad, and on the Ontario and Western Railroad.

Q. Do the lines of any other system approach near this colliery; if so, where?—A. The Honesdale branch of the Delaware and Hudson Railroad Company passes the colliery on the opposite side of the river and high up on the mountain. There is no access. The Edgerton colliery is located on a local branch of the Erie Railroad, called the Edgerton branch, to reach the colliery. The Delaware and Hudson Railroad Company is about 2½ miles from the colliery. It is the line between Wilkes-Barre and Carbondale.

The Sterrick Creek colliery is located on the Erie Railroad, and we have a connection with the Delaware, Lackawanna and Western Railroad and also one with the Delaware and Hudson Railroad.

The Lackawanna is on the Ontario and Western Railroad, a branch of it, a branch of the Delaware, Lackawanna and Western Railroad, and we have a connection with the Erie. The Delaware and Hudson Railroad passes the colliery on the opposite side of the river.

Babylon is located on the Lehigh Valley Railroad. There is no other connection there.

Q. Are there lines of any other railroad near it?—A. The Delaware, Lackawanna and Western is perhaps three-quarters of a mile away, the Bloomsburg division. We have no connection with that line.

The Mount Lookout colliery is located on the Lehigh Valley Railroad Company, and the track of the Bloomsburg division of the Lackawanna Railroad Company passes directly under the breaker. We have a connection with both roads, both the Lehigh Valley Railroad and the Delaware, Lackawanna and Western Railroad. No other.

The Forty-Fort colliery is located solely on the Lehigh Valley Railroad. No connection with the Delaware, Lackawanna and Western Railroad at that breaker. The nearest point on the Delaware, Lackawanna and Western Railroad is a switch from the line of the Delaware, Lackawanna and Western Railroad into Harry E colliery, about three-quarters of a mile away.

Harry E colliery is located on the Lehigh Valley Railroad and on the Delaware, Lackawanna and Western. No other railroads anywhere near it.

Q. Were Simpson & Watkins while operating prior to 1899 the owners of a gathering road which reached one or more of their collieries?—A. No, sir.

Q. Then Simpson & Watkins for getting their coals to market were entirely dependent upon the various lines which reached the collieries as you have described them?—A. Yes, sir.

Q. In the year 1898, what did Simpson & Watkins do with the output of their sundry collieries?—A. In a general way the coal was sold to various parties, coal purchasing companies, mining companies, and selling agents.

Q. Did Simpson & Watkins sell the coal at these collieries, or did they have agents in the different markets, located in different cities, through whom they sold it?—A. With the exception of two years, 1892 and 1893, when the Northwest coal was sold differently, all the coal was sold at the breaker.

Q. State to whom the coal from these several collieries, naming them, in their order, was sold in the year 1898?—A. The coal from Northwest colliery, the major portion of it, was sold to Dickson & Eddy. They are the sales agents for the New York and Scranton Coal Company, which in turn was owned by the New York, Ontario and Western Railroad Company. The surplus over what was de-

livered to Dickson & Eddy was sold to the Hillside Coal and Iron Company.

The product of the Edgerton colliery was sold to the Hillside Coal and Iron Company. The product of the Sterrick Creek colliery was sold to the Hillside Coal and Iron Company. The product of the Lackawanna, I am not sure, but I think part of it was sold to the Delaware, Lackawanna and Western, and part to the Hillside Coal and Iron Company. I may have to correct that by reference to the record. The Lehigh Valley Coal Company took the product of the Babylon. The Lehigh Valley Coal Company and the Delaware, Lackawanna and Western Railroad Company took the product of the Mount Lookout colliery, in alternate months. The Lehigh Valley Coal Company took the product of both Forty-Fort and Harry E collieries.

Q. Under what arrangements were the coals from these several collieries sold to the companies which you have specified above?—A. Under contracts.

Q. Give us the general nature of those contracts.—A. It was a contract for delivery to the various purchasers of the coal on what was known at that time as the 60 per cent contract. In other words, a basis was made, based on the average price of coal received at tide water, of which the shipper, the miner, the operator, received 60 per cent. I am now speaking of prepared sizes.

Q. And an agreed percentage for the smaller sizes?—A. Yes, sir.

Q. Were the contracts with all of the purchasers substantially the same?—A. That is so; yes, sir.

Q. Over what time did these contracts extend?—A. I would have to refer to the record to answer that. For varying periods, from three to seven years.

Q. They were not made for the life of the colliery in any case?—A. I can not recall that they were.

Q. In your connection with Simpson & Watkins from 1885 up to 1899, had the output of these collieries, with the exception of the two years you have mentioned, been sold under these same general kind of contracts to these same purchasers?—A. I think so.

Q. Had those contracts been made from time to time covering a period say from three to seven years each?—A. I think so; yes, sir.

Q. Upon what basis, so far as percentage of tide water prices, had those contracts been made?—A. You are speaking of the whole period?

Q. Yes; since 1885.—A. The original contracts were at 50 per cent, and then increased to 55 and then to 60.

Q. Can you tell me about what the output of all the collieries owned by Simpson & Watkins was for the year 1898?—A. I will furnish what it was and put it in the record at this place. The output was 1,302,579 tons for the year 1898.

Q. What was your connection with The Temple Iron Company?—A. Officially?

Q. In any way.—A. I was elected secretary in June, I think it was, 1899.

Q. You continued to be secretary up to date, have you?—A. No, sir. I was next made secretary and treasurer, and in 1903 I was made vice-president and treasurer.

Q. Did you have any connection with The Temple Iron Company before June, 1899?—A. No, sir.

Q. What was the business of The Temple Iron Company in 1898?

(Objected to by Major Warren because the witness having stated that he had no connection with it prior to June, 1899, can only give that which he may have learned by hearsay, and, therefore, it is incompetent.)

A. Engaged in the manufacture of iron.

Q. Where?—A. At Temple, Pa.

Q. Do you know about how much iron it manufactured?—A. No, sir. I have nothing to do with the iron department.

Q. Have you any information about how much iron it manufactured in 1898?

(Objected to by Major Warren as incompetent.)

A. I do not know. I can get it if you desire.

Q. Can you give us some idea whether it was a thousand tons a day or ten tons?—A. My impression is that they made about a hundred tons a day there.

Q. What was its capital stock in the year 1898?—A. $240,000. This was increased January 26, 1899, to $2,500,000.

Q. What is the capital stock of The Temple Iron Company now?—A. $2,500,000.

Q. Do you know over what lines of railroad The Temple Iron Company shipped its output of iron made at Temple in the year 1898 and prior thereto?—A. I do not.

Q. What lines of road reach the town of Temple?—A. The Philadelphia and Reading Railway. It is on the Reading Railroad. I do not think there is any other road there. Temple is in Berks County, 5 miles from Reading.

Q. What dividends are paid by The Temple Iron Company?—A. Six per cent per annum.

Q. Since what time have such dividends been paid?—A. Since the stock was increased in January, 1899. Prior to 1899, I do not know.

Q. Were the operations of Simpson & Watkins prior to the time the collieries of that firm were taken over by The Temple Iron Company profitable?—A. Yes, sir.

Q. Was each of the collieries taken over by The Temple Iron Company a paying proposition?—A. No, sir; not at that time.

Q. How many of them were losing money?—A. One.

Q. Which one?—A. Mount Lookout.

Q. What was the trouble? Why did it lose money?—A. The place was always in trouble. The physical conditions are bad there, the coal is thin and hard to mine. The breaker has been burned down twice and the mines flooded once.

Q. Who was the president of The Temple Iron Company in 1898, immediately prior to the acquisition by it of the collieries of Simpson & Watkins?—A. My recollection is it was Mr. George F. Baer.

Q. He has continued to be the president since that time?—A. No, sir; not all the time.

Q. Who succeeded him, and when?—A. Mr. T. H. Watkins in the early part of the year 1899, and Mr. Watkins remained as president until the latter part, I think, of 1900. Then Mr. Baer became president.

Q. When did Mr. Baer first become president of The Temple Iron Company?—A. I do not know. That is a matter of record in the minutes. I am speaking of the time prior to 1899.

Q. Were contracts made by Simpson & Watkins for the sale of the coals from all the collieries turned over by that firm to The Temple Iron Company in existence when the transfer was made?

(Objected to by Major Warren, because the witness has said that the contracts were made by the companies which Simpson & Watkins controlled in 1898, and, therefore, the question ought to be addressed to such contracts as the Forty-Fort, and the other companies they then owned or controlled, had with the various purchasers of coal.)

A. The contracts were in existence—the same contracts that they had been operating under.

Q. Were those same contracts carried out by The Temple Iron Company after it acquired control of those various collieries?—A. Absolutely. I want to qualify that. There were some immaterial changes, with the exception of Lackawanna.

Q. Those contracts were on the 60 per cent basis?—A. Yes, sir.

Q. When did they change to the 65 per cent basis?—A. In 1901.

Q. Were they all changed at once?—A. I think so.

Q. Are the contracts for the sale of coals from the several collieries originally controlled by Simpson & Watkins, and subsequently acquired by The Temple Iron Company, now existing with the same parties who purchased the coals while Simpson & Watkins were in control?—A. With the exception of the Lackawanna, there has been no change, practically, in the disposal of the coal.

Q. What change was made in reference to the Lackawanna colliery?—A. Before The Temple Iron Company acquired the colliery, or its four-fifths interest in it, the coal had been shipped over on to four or five different railroads, and afterwards for one year, the first year, I think 1899, it was delivered to the Hillside Coal and Iron Company, and after that to the Delaware, Lackawanna and Western Railroad Company.

Q. Mention the four or five railroads over which the Lackawanna coal was shipped during the time you have mentioned.—A. The New York, Susquehanna and Western Railroad Company, the Ontario and Western Railroad Company had some of it, and the Erie Railroad Company had some of it, and they shipped some of it on their own account—I can not recall the parties to whom they shipped—and the Lackawanna Railroad had some. I had nothing to do with

the Lackawanna prior to 1899; I am only speaking from recollection, from records.

Q. Going now to the acquisition by The Temple Iron Company of the collieries formerly controlled by Simpson & Watkins, who negotiated the purchase of those collieries on behalf of The Temple Iron Company?—A. I do not know.

Q. Who represented Simpson & Watkins in those transactions?—A. T. H. Watkins.

Q. You do not know the party with whom he negotiated?—A. I did not know anything of the transaction until it had been consummated.

Q. Do you know anything about how the prices for these collieries were fixed?—A. I do not.

Q. Do you know how the purchase price was paid or satisfied?—A. Yes, sir.

Q. Tell us.—A. Partially in bonds, partially in stock, and partially in cash.

Q. What was the total consideration?—A. About $5,000,000 in round numbers.

Q. Can you tell us during the year 1897 what the net profits of Simpson & Watkins were from these collieries which went to The Temple Iron Company?—A. No, sir; I can not remember that.

Q. Was it $100,000?

(Major Warren objected to the witness being asked to guess, when he says he knows nothing about it, as being incompetent.)

A. It was more than that, I am positive.

Q. Was it more than $200,000?—A. More than that undoubtedly.

Q. But how much more you do not know?—A. No; I do not know.

Q. You became secretary of The Temple Iron Company in January, 1899?—A. No; it was later, along in June or July—in June, I think.

Q. Were you acquainted with the owners of the stock of The Temple Iron Company after that time?—A. Do you mean the holders of the beneficial certificates?

Q. Yes.—A. No; I was not. They were very widely scattered.

Q. Do you know who subscribed for the increased stock when the capital of The Temple Iron Company was increased from $240,000 to $2,500,000?—A. No; I do not.

Q. How was the Reading Railroad interested in The Temple Iron Company when you became secretary?

(Objected to by Major Warren because there is no evidence that it ever was interested in The Temple Iron Company, and therefore the question is incompetent.)

A. I do not know. I do not exactly understand what you are getting at.

Q. Was the Reading Company, or the Reading Railroad Company a stockholder of The Temple Iron Company when you became secretary?—A. No, sir.

Q. When did it become such?—A. It has never been, not the railroad company, but the Reading Company.

Q. When did the Reading Company become a stockholder of record?—A. I think it must have been soon after the issue of the stock. The Reading Company, I think, always owned their own stock. It did not have the beneficial certificates, although I am not sure about that.

Q. What other railroad companies owned stock in The Temple Iron Company?—A. The Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, and The Central Railroad Company of New Jersey.

Q. When did the last-named roads become stockholders of record?—A. I think in December, 1906.

Q. All at once?—A. They may have had certificates of beneficial interest, but the stock itself was issued, taken up and issued by the companies in the latter part of 1906.

Q. All at the same time?—A. Yes, sir. That applies to all of these. I have already stated, however, that the Reading Company took up their stock at the time the certificates were issued. Instead of taking their certificates, they took up their stock. That is my recollection of it. I may be mistaken in that.

Q. What do you mean by taking up their stock? Please explain what you mean.—A. For the capital stock which was held by the trustee, certificates of beneficial interest were issued, which carried no voting power, but carried the interest, the dividend.

Q. The answer of The Temple Iron Company shows that the Lehigh Valley Railroad Company and other railroad companies agreed to take certain percentages of the capital stock of The Temple Iron Company. You are familiar with that contract?—A. Yes, sir.

Q. How were those percentages which these railroads were to take arrived at?—A. I do not know.

Q. You have no information on that subject?—A. None whatever. I never knew.

Q. You never inquired how that all came about?—A. I was told it was none of my business; I was not in a position to ask questions like that.

Q. Who did you inquire of?—A. Mr. Watkins.

Q. He told you it was none of your business?—A. Practically.

Q. You have no information on that subject that you can give us at all?—A. None whatever.

Q. As secretary of the company you never had curiosity enough to run that down?—A. No, sir. I was not secretary of the company at the time this deal was on.

Q. You have been?—A. For a while, yes.

Q. Has the stock been taken up by these roads in their proportion?—A. Yes, sir.

Q. And you do not know, nor have you any idea, how those percentages were arrived at?—A. That is absolutely correct.

Q. You are too wise a man to inquire?

(Objected to by Mr. Warren as an insinuation that there was something hidden that is not justified, and the question is certainly on the border line of an improper one.)

A. I was simply in the position of a sort of chief clerk all the time this was going on. I had a very small interest in Simpson & Watkins. I did not know that the deal was on until it had been consummated, and I did not get any information about the inside of it. That is a frank statement of fact.

Q. Who would know about that?—A. I presume Mr. Watkins could tell you, or the gentleman who was in charge of the various railroad interests.

Q. Would Mr. Simpson know, too?—A. I presume so.

Q. The reasons for all these things were not very much discussed, I presume?

(Major Warren objected to the question as being incompetent, certainly as to any discussion in which the witness did not participate.)

A. Simpson & Watkins were not in the habit of discussing any of their business or their interests with their employees. They gave orders. They did things and told us to go ahead and finish them up.

Q. Did you know of the connection of Simpson & Watkins with a projected railroad called the New York, Wyoming and Western?—A. I knew that they were interested in such a proposition.

Q. What was their interest?—A. I don't know. It was very small, as I understood it.

Q. How were they to be interested in it?—A. I believe that they were to contribute a certain amount of money for its construction.

Q. And were they to give their tonnage to the railroad, when completed, from their collieries?—A. I believe they were to give a portion of it.

Q. When was this New York, Wyoming and Western matter projected? In 1898, was it not?—A. I think so. About that time.

Q. Do you know why Simpson & Watkins were desirous to have that road built?—A. I do not know, only from hearsay.

Q. Tell us what you know about it.

(Objected to by Major Warren as this is asking the witness to tell of the mental operations of others, and is hearsay.)

A. From hearsay, I understood it was in order to get to tide water over other routes than the ones they were shipping in order to get better rates, or better accommodations, or something of that kind. That was the general understanding of the matter in Scranton.

Q. The purpose of the road was to give these people better freight rates to tide water?

(Major Warren objected to the statement of counsel in the form of a question as being a conclusion and incompetent.)

A. It was so understood.

Q. Have you ever figured out how much of the total anthracite coal tonnage was carried in the year 1898 over the Philadelphia and Reading system?—A. No, sir.

Q. You do not know about those percentages?—A. I do not know.

Q. Did you have anything to do with the settlement for sales of coals by Simpson & Watkins?—A. When they were selling their own coal?

Q. Yes.—A. Yes, sir; I had charge of the bookkeeping then. I was the bookkeeper.

Q. You settled those 60 per cent contracts, did you?—A. I received the money and took care of it and disbursed it under their directions. That is all I had to do with it.

Q. Did you not make settlements with the purchasing companies?—A. They simply remitted to us on our bills.

Q. Sent you a settlement?—A. Yes, sir. They remitted.

Q. On what figures were those settlements based?—A. To my recollection, on the 60 per cent contracts.

Q. Where did they get the figures on which the 60 per cent was calculated?—A. I understand these figures were made by the bureau of anthracite coal statistics, which was Mr. Ruley, the same as at the present time. I may be mistaken about that. That is the best of my recollection.

Q. While you represented Simpson & Watkins in this matter did you ever undertake to figure out whether the parties taking the coal under these 60 per cent contracts could pay the freight rate to tide water and get out of it enough money to pay Simpson & Watkins?—A. I did not.

Q. Do you know whether that could have been done?—A. I do not know. Our interest in the coal ceased when it was in the cars. I did not follow it any further than that.

Q. Do you know where your coals went that were sold under those contracts?—A. No, sir.

Q. You did not keep track of them?—A. No, sir. I have not seen a waybill in fifteen years.

Q. A good deal of your coal went to tide water at New York, did it not?—A. Possibly, but I do not know of my own knowledge.

Q. That is your understanding of the situation?—A. Yes, sir.

Q. Have the various railroads who now own the stock of The Temple Iron Company, or the Reading Company, advanced any moneys at any time to The Temple Iron Company since January, 1899?—A. They have.

Q. For what purpose?—A. To provide for the deficit in the earnings necessary to take care of the fixed charges.

Q. I thought you told me a while ago that The Temple Iron Company had been paying a 6 per cent dividend ever since 1899?—A. So they have.

Q. They did not earn it, but paid it?—A. They did.

Q. During what period did they pay a dividend when they did not earn it?—A. In 1899, 1900, and 1902, two strike periods.

Q. Nevertheless, the dividends were paid?—A. Yes, sir.

Q. And the money was furnished by whom?—A. By the railroad companies who were interested in The Temple Iron Company.

Q. In what proportions?—A. It was on a sort of sliding scale. The railroad companies who took the coal from any of our collieries participated in the deficit to the extent of 5 cents a ton up to 12 cents a ton; they participated in it according to the number of tons of coal that were delivered to them from each colliery, and if there was a deficit further than the 12 cents would cover, then all the companies interested participated in the difference according to the percentages shown in the trust agreement.

Q. Was there any year in which 12 cents per ton upon the coal received was not enough to cover the deficit?—A. Yes, sir.

Q. What years?—A. I think 1899 and 1900.

Q. During the years 1899 and 1900, by returning to The Temple Iron Company 12 cents per ton for every ton of coal received by them the purchasing railroad companies did not supply funds sufficient to enable The Temple Iron Company to pay its deficit?—A. No, sir; they did not.

Q. The balance was made up by contributions from all the parties interested in the stock, in proportion to their holdings; is that right?—A. That is correct.

Q. Do you know how much that total deficit was for the year 1899?—A. I can not give it to you without referring to the record.

(At 1 o'clock a recess was taken until 2 p. m.)

Q. I understood you to say that in order to make up deficits contributions were made to The Temple Iron Company by parties interested in its stock for the years 1899, 1900, and 1902?—A. Yes.

Q. And that for the years 1899 and 1902 those contributions were 12 cents a ton for all coal sold by The Temple Iron Company, the additional amount being prorated among the stockholders in proportion to their stock holdings?—A. That is correct.

Q. Tell us, please, whether for any other years except the three years named, 1899, 1900, and 1902, there has been a deficit?—A. There never has been.

Q. I understand that The Temple Iron Company has earned and paid in every year since 1899, except 1900 and 1902, 6 per cent?—A. Yes.

Q. And that the parties interested in its stock have contributed nothing to it since 1902?—A. Nothing at all.

Q. Can you tell us now what the contribution in 1899 was? How much total?—A. I can not separate the years. I know the gross amount.

Q. How much was the gross amount for 1899, 1900, and 1902?—A. $483,000. May I add a word to that?

Q. Certainly.—A. In my testimony before the Interstate Commerce Commission they got the amount wrong. That same question was asked me and, either through typographical error or a stenographical one, they only got about half of that. That is in round numbers. I can not remember the odd dollars.

Q. Give us now the names of the companies who contributed to make up this total of $483,000.—A. The Delaware, Lackawanna and Western Railroad Company; Lehigh Valley Railroad Company; the Erie Railroad Company; The New York, Susquehanna and Western Railroad Company; the Reading Company; and the Central Railroad of New Jersey.

Q. Has that $483,000 ever been repaid to these contributing companies?—A. It has not.

Q. Have they anything in the way of an obligation of The Temple Iron Company to repay it?—A. Not that I know of. The money was not paid to us directly; it was paid to the trustee. They probably have something from the trustee to show that this money was paid. I have no personal knowledge of it.

By Judge CAMPBELL:

Q. Was that made in pursuance of the contract?—A. Absolutely.

By Mr. MCREYNOLDS:

Q. The books of The Temple Iron Company, as I understand, do not show this item of $483,000 at all?—A. That is correct; except as a matter of record.

Q. You do not carry it as an obligation of The Temple Iron Company?—A. Not on our books.

Q. And of course do not pay any interest on it?—A. No.

Q. Can you tell us where the coal mined from the collieries of The Temple Iron Company is sold by the parties who purchase it?—A. I can not.

Q. Does much of it go to New York Harbor?—A. I can not tell you.

Q. You do not know at all?—A. No, sir; my responsibility ceases when the coal is in the cars at the breaker.

Q. In making these settlements with the purchasers who take the coal of The Temple Iron Company, as I understand, you get 65 per cent of the tide-water price, which is based upon an average of the prices for that region?—A. Yes, sir.

Q. Are there any deductions made from that at all for loss in transportation?—A. Very infrequently, and that is only in the way of car leakage, or something of that kind; on single cars occasionally they make a claim on us for the loss of tonnage in that car. It is not very material.

Q. But, generally speaking, you get 65 per cent of the average amount that is returned by Ruley's bureau?—A. We do, yes; referring to the prepared coal, of course.

Q. Are the contracts between The Temple Iron Company and the companies which you say purchase the output of the various col-

lieries substantially in the same form?—A. Absolutely in the same form.

Q. Do they provide that this coal shall be sold during the life of the colliery?—A. They do.

Q. Were you a party to the negotiations which led up to a change from the form of contract which originally provided for sale during a specified term to those which provided for a sale during the life of the colliery?

Mr. WARREN. I desire to enter an objection to that, because the evidence already discloses that there was no general form of contract that was limited to a number of years rather than the life of the colliery, to which the life of the colliery was applied, when the change was made from 60 to 65 per cent. There were varying forms—some for the life of the colliery, as much before as after; consequently the question is incompetent.

A. I was not.

Q. Do you know anything about the reasons for the change in the form of contract from a term contract to a contract covering the life of the collieries?—A. I do not.

Q. You were not consulted or advised with about it?—A. I was not.

Q. Who represented The Temple Iron Company in making those contracts?—A. Mr. Baer, I suppose.

Q. He was the president?—A. The president.

Q. What is the total output of the various collieries now owned by The Temple Iron Company annually?—A. Last year it was 1,950,000 tons.

Q. During the last five years what would you say was the average?—A. I should say about 1,600,000 tons.

Q. Who is the active manager of the affairs of The Temple Iron Company now?—A. The mining department, I am.

Q. Who of its business affairs outside of its mining?—A. I am, under the direction of a board of directors, of course, and the president.

Q. Does the president take an active interest and part in the direction of its affairs?—A. Very.

Q. Very active?—A. Yes.

Q. He performs the general duties of the president of the company, does he?—A. Yes.

Q. How long has Mr. Baer been president?—A. Since 1900, the latter part of 1900; that is my recollection.

Q. Are you a director of The Temple Iron Company?—A. No, sir.

Q. Do you attend the directors' meetings?—A. I do.

Q. Have you attended the directors' meetings regularly since 1899?—A. Practically, yes.

Q. What are your functions and why do you attend such meetings?—A. As a secretary, of course. I attended the meetings while I was secretary, and since that time as secretary and treasurer up

to the time I was made vice-president, to report on the company's work, finances, etc.

Q. How often does the board meet?—A. Three times a year.

Q. Where?—A. New York City.

Q. Whereabouts in New York City?—A. 143 Liberty street.

Q. In whose office?—A. In the office of the president of the Jersey Central, Mr. Baer.

Q. Do meetings not sometimes occur more frequently than three times in each year?—A. Not to my knowledge, except that when Mr. Watkins was president they had meetings every month; but for the last five years they have been held, as I say, about three times a year.

Q. Are the meetings of the board of directors generally attended by a full membership?—A. No.

Q. Who are the parties who have been in attendance generally during the last five years?—A. Mr. George F. Baer, Mr. W. H. Truesdale, Mr. F. D. Underwood, Mr. Thomas P. Fowler, Mr. E. B. Thomas, and Mr. J. S. Harris.

Q. With what railroads are any of those whom you have named connected and what is their relationship?—A. Mr. Baer is the president of the Central Railroad of New Jersey and of the Philadelphia and Reading Railway Company. Mr. Truesdale is president of the Delaware, Lackawanna and Western Railroad. Mr. Underwood is president of the Erie Railroad. Mr. Fowler is president of the New York, Ontario and Western Railroad. Mr. E. B. Thomas is now president of the Lehigh Valley Railroad. Mr. Harris, I think all the official position he has, so far as my knowledge goes, is that he is a director of the Philadelphia and Reading Railway Company.

Q. While you were secretary of The Temple Iron Company did you keep the minutes of the directors?—A. I did.

Q. Did you put in those minutes all the things that were done at the meetings?—A. I did.

Q. When did you cease to be secretary?—A. In March, 1903.

Q. Who succeeded you?—A. George L. Houser.

Q. Has he kept the minutes since that time?—A. He has not.

Q. Who has?—A. I have. As a matter of convenience I acted as secretary.

Q. So since 1899 you have been vice-president and kept the minutes of the directors' meetings of The Temple Iron Company?—A. I have.

Q. Have you been present at any meetings of the gentlemen who composed the directorate of The Temple Iron Company held immediately subsequent to the official meetings during that time?—A. No, sir.

Q. Have you known of such meetings?—A. I have not.

Q. Were you acquainted with the appointment of a committee on rates to outside shippers during the year 1901?

Mr. WARREN. We object to this unless it is more definitely stated than in the question, because it is incompetent.

A. I can not recall anything of the kind.

Q. You know nothing of a committee appointed, consisting of members of the directorate of The Temple Iron Company in the year 1901 who were to consider rates to outside shippers?

Judge CAMPBELL. What rates do you refer to? There are a variety of rates.

Mr. MCREYNOLDS. Let the witness answer it.

A. I can not recall anything of the kind.

Q. Have you been present in the board of directors of The Temple Iron Company or with the members of that committee when rates were discussed, railroad rates I mean, on anthracite coal?—A. No, sir.

Q. You have not been present at any meeting, official or unofficial, when those gentlemen were present, where the subject of freight rates over these coal-carrying roads was discussed?—A. No, sir.

Q. Do you know Mr. Cumming, first vice-president originally of the Erie Railroad Company?—A. I know him, yes; not very well.

Q. Did you know of a committee of which he and Mr. Warren, of the Central Railroad of New Jersey, and Mr. Sayre, a vice-president of the Lehigh Valley Railroad Company, were members, whose business it was to inquire into the subject of freight rates on anthracite coal to outside shippers?—A. No, sir.

Q. You know nothing at all about a committee of which any one of those gentlemen was a member?—A. No, sir; I know nothing about it.

Q. Did you at any time send out a written statement to the various railroad companies interested in carrying anthracite coal, concerning the rates that were to be charged?—A. No, sir.

Q. And you know nothing about that matter at all?—A. No, sir; nothing at all; had nothing whatever to do with it.

Q. Who does know about it?

Mr. WARREN. We object to that until it is first established that it is a fact; otherwise it is incompetent to ask a man if he knows something about something he says he does not know anything about.

Q. Who does know about it?—A. I presume the presidents of the railroads interested.

Q. You knew there was such an arrangement, did you not?—A. Possibly at the time, but it was not a matter of consequence to me and I really can not recall it. That is a fact.

Q. Do you not know that there was a consideration of that fact by parties connected with the directorate of The Temple Iron Company, and that they reached a conclusion on that subject, of which the railroads were notified?—A. That might be so.

Q. Do you not know it was so?—A. No; I do not. That is the truth; I do not. I never heard it discussed at any meetings that I attended in New York.

Q. Did you ever hear it discussed in any meeting that you attended anywhere?—A. No, sir.

Q. Have you any information about it?—A. I have none at all.

Q. Did you not send out any communications which resulted from the conference among these gentlemen?—A. Never sent out a communication relating to rates in my life.

Q. What rates are paid by the Temple Iron Company on shipments of coal?

Mr. WARREN. We object to that, the witness having said that they sold all their coal at the collieries and have no dealings whatever with the railroad companies in the matter of freight rates.

A. We do not pay any freight.

Q. You do not ship any coal at all over any railroad?—A. No, sir.

Q. Do you sell any coal that is not shipped over railroads?—A. Only a little for local sales, our retail business at local collieries.

Q. You have some retail business at each of your collieries?—A. Yes, sir.

Q. All the rest of your coal is loaded into cars, is it?—A. That is right.

Q. Where is it weighed?—A. At the collieries.

Q. Are your settlements made with the purchasers upon the weights at the colliery?—A. Yes, they are now.

Q. What do you mean by now? Was there a time when that was not true?—A. Yes, at one time the Lehigh Valley Railroad Company weighed the coal and we had to settle then on their weights. That was some time ago, though; several years ago. Now they take our weights.

Q. At the breaker where it is loaded, you weighed it and settlements are made according to those weights?—A. Yes, sir.

Q. No deduction is made from those weights on account of loss, except, as you said a while ago, occasionally a reclamation?—A. There is an allowance made, of course, on the coal for water, snow, and ice, and possibly leakage.

Q. A fixed allowance?—A. Yes; it amounts to about three-quarters of 1 per cent.

Q. Does that apply to all shipments?—A. All shipments of the coal that is loaded.

Q. Then from every shipment from every colliery you make there is an allowance of about three-quarters of 1 per cent?—A. Yes; that is universal in the region.

Q. Your weights are charged with that three-quarters of 1 per cent before settlements are made?—A. Yes.

Q. Tell me again, please, when the contracts of sale covering the output of the collieries owned by The Temple Iron Company were changed from the 60 to the 65 per cent basis?—A. In 1901.

Q. About what time?—A. About the first of September.

Q. Do you know how long the negotiations looking toward this change had been pending before it was actually made?—A. I had nothing to do with the negotiations, but it was started, I think, in

1900, about the time of what we call the powder strike. I think so, that is my recollection.

Q. When the change was made to the 65 per cent basis, did that relate back to a former time, or was it only reckoned from the date of the agreement?—A. I can not remember that. That is a matter of book record.

Q. I wish you would look that up in your records and ascertain what it is and give us that information, to be inserted in the record at this point, please.—A. Gladly.

Q. Are any of the coals mined from collieries belonging to The Temple Iron Company shipped over the Philadelphia and Reading Railway system?—A. No. There was never any coal shipped over the Reading system. It does not get into the region.

Q. Do you know who owned the stock of The Temple Iron Company at the time it acquired the collieries formerly belonging to Simpson & Watkins?—A. In a general way I do.

Q. Who were they?—A. Mr. George F. Baer and Mr. Albert Broden.

By Mr. WARREN:

Q. You are speaking of the time before they acquired it?—A. Yes; but it is practically the same thing. You mean the owners of the $240,000 of stock?

By Mr. MCREYNOLDS:

Q. Yes.—A. Mr. George F. Baer, Mr. Albert Broden, a man by the name of Smith, Mr. Frank Smink, and I think there was one other who held a qualifying share—one or two shares—I can not remember who.

Q. Do these men still hold stock in The Temple Iron Company?—A. Mr. Baer, Mr. Broden, and Mr. Smink.

Q. Who subscribed for the increased capital when it was enlarged from $240,000 to $2,500,000?—A. I do not know. That is a matter of record, and I would have to go to the records for that. I wanted to explain that I had nothing to do with the minutes or anything else at the time this was all going on. You will find that all in the minute book. My mind is not charged with it.

Q. Was Mr. Baer the principal shareholder at the time you were talking about?—A. I think he was.

Q. Or a majority shareholder?—A. I can not say that. You can get that from the minute book. It would be a natural supposition that he was, but I would not say.

By Mr. TODD:

Q. That would be in these books that we have down here?—A. Yes, I think so.

(Witness' examination suspended.)

WILLIAM R. TAYLOR, a witness for the plaintiff, recalled.

Direct examination by Mr. MCREYNOLDS:

Q. You were the secretary of The Philadelphia and Reading Railroad Company in February, 1892, were you not?—A. Yes, sir.

Q. Who was president of The Philadelphia and Reading Railroad Company at that time?—A. Mr. A. A. McLeod.

Q. Do you know whether or not, during February, 1892, Mr. McLeod issued a statement in which he undertook to explain the great advantages that would accrue from the leasing by The Philadelphia and Reading Railroad Company of the New Jersey Central and of the Lehigh Valley Railroad?—A. I do not remember any statement of that kind issued by Mr. McLeod; no, sir.

Q. Have you any recollection of a statement issued by him to the press about the time these leases were entered into, concerning the result of these leases?—A. I do not remember any statement of that kind; no, sir.

Q. Would the records of the Reading probably contain any statement which might have been made at that time to the press? Was it the custom to preserve such statements?—A. No, sir. If such a statement was made, it was made by the president on his own responsibility.

By Judge CAMPBELL:

Q. By way of an interview with a newspaper representative?—A. By way of an interview, I should say.

By Mr. MCREYNOLDS:

Q. And the records of the company do not preserve such interviews?—A. No, sir.

Q. Mr. Franklin B. Gowen was the president of The Philadelphia and Reading Railroad Company in February, 1876, was he not?—A. Yes, sir. He had been elected in January of that year.

Q. I show you here a copy of "The Coal Trade; a compendium of valuable information relative to coal production, prices, etc., for 1876," in which there is a copy of what purports to be the report of a committee composed of Thomas Dickson and Franklin B. Gowen concerning anthracite coal shipments. I wish you would look at that report and see if you have ever seen it before and whether it is in the records of the Reading Company. [Handing book to witness.]—A. I have some papers in my custody as secretary of the company which came to me from the old corporation, which may contain the original of this document, but I am not sure.

Q. Have you ever seen that document before that you recall?—A. As I say, I have in my possession one original document signed by Mr. Gowen and others, but I am not sure whether this is the one.

Q. Will you produce and let us see those documents so that we may determine whether that is in there or not?—A. Yes, sir.

(Witness' examination suspended.)

(Adjourned until Wednesday, November 25, 1908, at 10 a. m.)

Met pursuant to adjournment at Philadelphia, Pa., Wednesday, November 25, 1908.

Present: The Examiner; G. Carroll Todd, esq., for the United States; and J. D. Campbell, esq., Adelbert Moot, esq., Everett Warren, esq., and J. H. Torrey, esq., for various defendants.

Examination of WILLIAM R. TAYLOR, resumed.

Direct examination by Mr. TODD:

Q. At the request of counsel for the Government, you have produced an instrument in writing, dated February 18, 1876, signed by Thomas Dickson for the Delaware and Hudson Canal Company interest, by John Taylor Johnston for the Central Railroad of New Jersey interest, by A. Pardee for the Lehigh Valley Railroad interest, by Samuel Sloan for the Delaware, Lackawanna and Western Railroad Company, by George A. Hoyt for the Pennsylvania Coal Company, and by Franklin B. Gowen for The Philadelphia and Reading Railroad Company interest. Will you state the general character of that instrument?

By Judge CAMPBELL:

Q. I observe from the marks on these documents that they are not record papers filed amongst the archives of The Philadelphia and Reading Railroad Company, as is usual.—A. No, sir.

Q. You were the stenographer to the president, Mr. Franklin B. Gowen, at the date of these documents?—A. Yes, sir.

Q. You were at that time the custodian practically of the private papers of the president, and continued to be so later on, and even after you became the secretary of the company you still retained the personal possession of things just as you had been previously doing for these executive officers?—A. Yes, sir.

Judge CAMPBELL. I object to the introduction of any testimony regarding the documents in question, for the reason that they appear on their face to be utterly immaterial and irrelevant, as well as incompetent. Also the document shows on its face to have been a common understanding among the parties named, to exist only for and during the year 1876. The document is wholly res inter alias acta, and can have no bearing or effect upon the parties to this controversy in this suit. Finally because the present question calls for the witness's characterization of the document, which should show and speak for itself, and its interpretation and characterization remains for the court, and not for this witness.

Judge MOOT. I object on behalf of all parties to this suit who do not appear in any way to be parties to this plan which the witness is asked to characterize, and which is offered in evidence, and my objection is that nothing of the kind is alleged in the petition; that it precedes the date even of the legislation under which the Government brings its suit, and that it is wholly incompetent and improper as to the other parties to this suit, and, in particular, to the Erie Railroad Company, as an illustration.

Mr. TODD. Now answer my question.

(Question read to the witness.)

A. The paper is described as a plan for the government of the anthracite coal trade to competitive points for the year 1876.

Q. How did that instrument come into your possession?—A. As stenographer for Mr. Franklin B. Gowen, who was then president of the company, I presume, it was given to me to file among the other papers in the president's office. It has remained continuously in my possession since that time, with the exception of a period from, I think, the first of April, 1885, to the middle of January, 1886, when I was not connected with the company.

Q. It came into your possession again after 1886, when you resumed your connection with the company?—A. When I became secretary.

Q. It came into your possession as secretary of The Philadelphia and Reading Railroad Company?—A. When I became secretary of The Philadelphia and Reading Railroad Company; yes.

(Paper identified, offered in evidence by Mr. Todd as Government Exhibit No. 152.)

Judge Moor. I repeat my objection on behalf of all the defendants who do not appear in any way to be connected with these documents.

(Judge Campbell repeated his objection to the offer in evidence of these documents.)

By Mr. Todd:

Q. Do you recall what office Mr. Thomas Dickson held with The Delaware and Hudson Canal Company at that time?—A. I think he was president.

Q. Do you recall what office Mr. John Taylor Johnston held with The Central Railroad Company of New Jersey at this time?—A. He was the president of The Central Railroad Company of New Jersey.

Q. What office did Mr. A. Pardee hold in the Lehigh Valley Railroad Company at the time this instrument was executed?—A. I do not think Mr. A. Pardee was officially connected with the Lehigh Valley Railroad Company. He may have been a director.

Q. At the time this instrument was executed, Mr. Franklin B. Gowen was president of The Philadelphia and Reading Railroad Company, was he not?—A. Yes, sir.

Q. It appears on the instrument itself that Mr. Samuel Sloan was president of the Delaware, Lackawanna and Western Railroad Company, and that Mr. George A. Hoyt was vice-president of the Pennsylvania Coal Company. That is in accordance with your recollection, is it not?—A. Yes, sir.

Q. Did The Philadelphia and Reading Railroad Company, so far as you know, live up to this plan?—A. I had no real connection with matters of that kind at that date.

Q. You do not know?—A. No, sir.

Q. In looking for this agreement did you run across any others of the same general character?—A. No other agreement of that character did I find among the other papers that I have.

Q. Is Mr. Dickson, Mr. Johnston, Mr. A. Pardee, Mr. Samuel Sloan, Mr. George A. Hoyt, or Mr. Franklin B. Gowen now living?—A. None of them are living.

Examination of ARCHIBALD F. LAW resumed.

Direct examination by Mr. TODD:

Q. Since the adjournment yesterday you have produced, at the request of counsel for the Government, for their inspection, certain books of The Temple Iron Company. I hand you those books, and ask you to state what each one contains.—A. For the purpose of convenience, we have numbered them 1, 2, 3, and 4. No. 1 contains the minutes of the meetings of the stockholders of the board of directors from April 5, 1873, the organization of the company, to October 8, 1901, inclusive. No. 2 contains the minutes of the meetings of the stockholders and of the board of directors from December 10, 1901, to date. No. 3 contains the minutes of the meetings of the executive committee of The Temple Iron Company from July 3, 1900, its inception, to December 27, 1904, inclusive. No. 4 contains the minutes of the meetings of the executive committee of The Temple Iron Company from January 9, 1905, to date.

Q. Did you not as secretary of The Temple Iron Company, and subsequently as vice-president, record and keep and sign the minutes contained in these books which you have described, since June, 1899?

Major WARREN. I object to the question. He was asked about that yesterday, and he said Houser was secretary.

A. I acted as secretary for the meetings of the stockholders and of the board of directors, and for part of the time as secretary of the executive committee, a very short time.

By Mr. TODD:

Q. During the whole of the time since June, 1899, you were secretary and recorded the minutes of the meetings of the board of directors of The Temple Iron Company and of the stockholders?—A. With the exception of three years. I think you will find that Mr. Houser was present at the stockholders' meetings in Reading, and signed the minutes of the stockholders' meetings as secretary during those three years.

Q. What three years were those?—A. I should have to refresh my memory on that. Probably the last three.

Q. During the whole period you have kept the minutes of the meetings of the directors?—A. Practically; yes, sir. I was out of the country last December, when the semiannual meeting was held in New York, and Mr. Houser was present at that time; about the 10th of last December.

Q. That was the only occasion you recall when you did not keep the minutes?—A. There are two records, I think, two or three records of minutes in that book of meetings which I did not attend. The memoranda were sent to me and written into the minutes.

Q. Two or three since 1899?—A. Yes, sir.

Q. But the rest you did attend and kept the minutes and recorded them and signed them, first as secretary of The Temple Iron Company and subsequently as vice-president?—A. Not as vice-president; but as secretary and as secretary pro tem. That is correct.

Q. Do these books contain the minutes of all the meetings, regular or special, of the board of directors, and of the stockholders, in the periods you stated?—A. Yes, sir; to the best of my knowledge and belief.

Q. Do these minutes of the executive committee contain the minutes of all the meetings of that committee, regular or special, during the period you have stated?—A. Absolutely.

Q. Were there any other committees during the period that you have been secretary and vice-president of The Temple Iron Company?—A. None whatever.

Q. No regular or special committees?—A. None whatever.

Q. In the annual report of the president of The Temple Iron Company for the year 1898 there is set forth the balance sheet of the company as of January 1, 1899?—A. That would be for the year 1898.

Q. In which it is shown that the assets of the company at that time were $71,519.25. That is correct, is it not?—A. I do not know anything about this.

Q. I have read correctly from that book?—A. It would seem so; yes; as a matter of record.

Q. I have read correctly from the book?—A. That is correct; yes, sir.

(Entry read offered in evidence.)

(Entry objected to as incompetent and immaterial and as having no relevancy to this issue by Major Warren.)

Q. I hand you the book containing the minutes of the meetings of the directors through October, 1901, and ask you to read into the record the minutes of the meeting of February 3, 1899.

Judge Moor. We object to this method of introducing documents. The books are here. Any entries which the learned counsel for the Government desires to offer, I submit, the orderly way is to offer them, and not to ask the witness, who has no association with the matter, to read for him. We object to the entry being made, assuming that it is read by the witness instead of by counsel, as being immaterial and irrelevant, as well as incompetent.

A. (Reading from book No. 1, page 137):

"MEETING OF BOARD OF DIRECTORS, GENERAL OFFICE,

"*518 Washington Street, Reading, Pa., February 3, 1899.*

"A meeting of the board of directors was held this day at 9.30 o'clock a. m., all the members being present, to wit, George F. Baer, president; Bentley H. Smith, F. C. Smink, and Albert Broden.

"The president presented and read an agreement to be made between Clarence D. Simpson and Thomas H. Watkins, composing the firm of Simpson & Watkins, of Scranton, Pa., of the one part, and The Temple Iron Company, of the other part, which provides

inter alia, that said Simpson & Watkins will assign, set over, and transfer to The Temple Iron Company all of the capital stock, assets, and property of the following corporations: (*a*) The Forty Fort Coal Company; (*b*) The Mt. Lookout Coal Company; (*c*) The Wyoming Land Company; (*d*) The Wyoming Electric Light Company; (*e*) The Babylon Coal Company; (*f*) The Sterrick Creek Coal Company; (*g*) The Edgerton Coal Company; (*h*) The Hendrick Land Company; (*i*) The Northwest Coal Company; (*j*) The shares of the Lackawanna Coal Company, a limited copartnership of the State of Pennsylvania.

"On motion of Bentley H. Smith, seconded by F. C. Smink, it was unanimously resolved that the officers of the company be, and they are hereby, authorized and directed to execute, under the corporate seal of the company, duly attested, the above agreement and deliver the same as the corporate act of The Temple Iron Company.

"On motion adjourned.

"(Signed) T. O. YARRINGTON, *Secretary.*"

Q. In the minutes of the meeting of the board of directors of The Temple Iron Company held June 27, 1899, I find this entry:

"A letter from the president addressed to the board of directors was read and placed on file, said letter briefly reciting the action taken by the president in sundry matters relating to the business of the company." Will you please produce that letter?—A. I will do so later.

Q. In this same book from which you have just read, I find the minutes of the directors' meeting of The Temple Iron Company, held on March 30, 1899, at which meeting it is recorded that the following members were present: Messrs. Watkins, Baer, Walter, Maxwell, Harris, Truesdale, Thomas, and Smink. One of the entries in the minutes of that meeting I read:

"After considering the proposition to establish a statistical bureau in New York for the purpose of keeping records of all matters of interest to the anthracite coal companies, the quantities to be mined each month, the prices, and so forth, it was, upon motion of Mr. Maxwell, seconded by Mr. Thomas, unanimously resolved,

"That the questions embodied in the suggestions as to a bureau of statistics and disposition of surplus coal be referred to a committee of three, of which the president shall be chairman, to report on the practicability of the suggestions, and, if found practicable, to report a detailed plan."

(Above read minute offered in evidence by Mr. Todd.)

(Objected to for the same reason by Major Warren.)

Q. (Continued.) Was that bureau of statistics referred to here ever established?—A. Not along those lines. I am speaking from memory only. I know that there was a bureau of which Henry Flemming was secretary. That is all I know about it. So far as relating to prices or rates, I never heard of anything of that kind in connection with it.

Q. That is the only bureau you know of having been established?—A. Yes, sir; Mr. Fleming furnished us then with about the same class of information that Mr. Ruley does now; that is, the tonnage and average prices and so on.

Q. Was not Mr. Ruley furnishing information at that time?—A. Yes, sir; but not in so much detail as Mr. Fleming was.

Q. This reference is not then to the bureau of which Mr. Ruley is the head?—A. No, sir.

Q. Turn to the minutes of the meeting of the board of directors of The Temple Iron Company held on July 2, 1901, and read them into the record, please.—A. (Reading):

"NEW YORK, *Tuesday, July 2, 1901.*

"A meeting of the board of directors of The Temple Iron Company was held at 143 Liberty street, New York City, on Tuesday, July 2, 1901, at 12 o'clock noon.

"Present E. B. Thomas, I. A. Stearns, J. S. Harris, Alfred Walter, and Thomas P. Fowler.

"On motion, duly seconded, the following resolution was adopted:

"*Resolved*, That Mr. Cumming, Mr. Sayre, Mr. Henderson, Mr. Caldwell, and Mr. Warren be appointed a committee to consider the advisability and expediency of making a 40 per cent rate to outside shippers, or a flat rate, and, if so, what rate.

"(Signed) A. F. LAW, *Secretary.*"

Q. What was meant by "outside shippers?"

(Question objected to by Major Warren as incompetent.)

A. I do not recollect that meeting at all. But, I would say that they probably meant the independent operators.

Q. Who shipped their own coal?—A. I should imagine that was it.

Q. Could it have meant any other shippers?

(Objected to by Major Warren as asking the witness to guess.)

A. I do not know. That is only guess work.

Q. You do not know of any others that they could have meant?—A. No, sir.

Q. Where is the report of that committee?—A. I never saw it. I do not know.

By Major WARREN:

Q. You do not know that there ever was a report?—A. No; I do not know that there ever was a report.

By Mr. TODD:

Q. You were present at this meeting of the board of directors?—A. Undoubtedly.

Q. And heard the discussion which took place at that meeting?—A. I did. But I can not recall it. I was perfectly honest in my testimony yesterday when I said I could not recall this meeting at all. I was simply the clerk of the board, and these things passed out of my mind.

Q. You have not any recollection of the discussions which led to the appointment of this committee at all?—A. None whatever.

Q. Not the slightest?—A. Not the least.

Q. You never heard of any report?—A. I never heard of any report.

Q. You know nothing about it?—A. Know nothing about it whatever.

Q. I ask you to make a search in the records of The Temple Iron Company and produce any reports which that committee made, which you are able to find, at the next hearing. Make as careful a search as you can possibly make.—A. I will make search. I will find it if it is there.

Q. In this same book of the minutes of the board of directors through October, 1901, numbered one, there are the minutes of a meeting of the directors of The Temple Iron Company held on July 30, 1901. Please read those minutes, which I now offer in evidence, into the record.—A. (Reading):

"NEW YORK, *Tuesday, July 30, 1901.*

"A meeting of the board of directors of The Temple Iron Company was held at 143 Liberty street, New York City, on Tuesday, July 30, 1901, at 12 o'clock noon.

"Present: Messrs. E. B. Thomas, I. A. Stearns, Alfred Walter, Thomas P. Fowler, and W. H. Truesdale.

"In the absence of the president, on motion, Mr. E. B. Thomas was elected chairman of the directors' meeting.

"The minutes of the previous meeting were read and, on motion, approved.

"The chairman presented a report of the operations of the company for the month of June, 1901, together with the treasurer's report of the finances of the company.

"A letter from Mr. J. B. Dickson was presented, requesting consideration of certain conditions affecting the sale of coal at Boston and vicinity, but the concensus of opinion was that it was not within the province of The Temple Iron Company to act upon questions of this character.

"There being no further business, on motion, the meeting of the directors was adjourned.

"(Signed) A. F. LAW, *Secretary.*"

Q. Who is Mr. J. B. Dickson?—A. A member of the firm of Dickson & Eddy.

Q. Who are they?—A. Coal sales agents for the Ontario and Western Railway Company, and the Northwest Coal Company.

Q. What was that letter about?—A. I can not recall.

Q. You do not recall anything about that discussion at all?—A. No; I do not.

Q. Produce that letter at the next meeting.—A. I will do so if I can.

Q. In this same book are the minutes of a meeting of the board of directors of The Temple Iron Company, held September 17, 1901. Please read those minutes, which I now offer in evidence, into the record.—A. (Reading):

NEW YORK, N. Y., *Tuesday, September 17, 1901.*

"A meeting of the board of directors of The Temple Iron Company was held at 143 Liberty street, New York City, on Tuesday, September 17, 1901.

"Present: Messrs. George F. Baer, Thomas P. Fowler, J. R. Maxwell, I. A. Stearns, W. H. Truesdale, and Alfred Walter.

"On motion, the reading of the minutes of the previous meeting was dispensed with.

"A communication from Messrs. Dickson & Eddy relative to the 5 cent differential was presented by Mr. Fowler, and the following motion was adopted:

"Moved and seconded that the communication of September 12, 1901, from Messrs. Dickson & Eddy, addressed to and presented to the meeting by Mr. Fowler, relative to the 5 cent differential, be referred to the sales agents to investigate and report.

"There being no further business, on motion, the meeting was adjourned.

"(Signed) A. F. LAW, *Secretary.*"

Q. What report did the sales agents make with respect to that matter?—A. I do not know if they made any.

Q. Do you remember anything about the details of that communication from Dickson & Eddy?—A. I do not.

Q. Nothing at all?—A. Nothing at all.

Q. Please produce that communication at the next hearing.—A. I will do so.

Q. In this same book are the minutes of a meeting of the directors of The Temple Iron Company, held October 8, 1901. Please read those minutes, which I now offer in evidence, into the record.—A. (Reading):

"NEW YORK, N. Y., *Tuesday, October 8, 1901.*

"Pursuant to a call of the president, a meeting of the board of directors of The Temple Iron Company was held at 143 Liberty street, New York City, on Tuesday, October 8, 1901, at 2 p. m.

"Present: Messrs. George F. Baer, Thomas P. Fowler, Alfred Walter, E. B. Thomas, I. A. Stearns, and W. H. Truesdale.

"The minutes of the previous meeting were read, and, on motion, approved.

"The president presented a report of the operations of the company to September 1, also an estimate for the month of September, together with the treasurer's report to October 7.

"The president presented a letter from Mr. W. W. Ruley, wherein he asked for extra compensation, stating that owing to the increase in the services required of him, the present allotment was inadequate.

"On motion, duly carried, the question was referred to Mr. Baer, with power to act.

"The subject of reducing the number of the sizes of coal was introduced, and, after discussing the matter, on motion, it was agreed to refer it to the general superintendent for a report, covering the physical aspect of the question and how it would be affected by the provisions of the coal leases under which the operations were being conducted.

"There being no further business, on motion, the meeting of the directors was adjourned.

"(Signed) A. F. Law, *Secretary.*"

Q. Who was Mr. W. W. Ruley then, and who is he now?—A. Mr. Ruley was what we called the commissioner of coal statistics; that may not be his proper title; but he was appointed to make up the statistics on which the prices were made, the averages, and so on. He is the same person who has been shown here in the evidence to keep what is called the bureau of anthracite coal statistics.

Q. Who appointed him?—A. That I do not know.

Q. Do you remember any of the discussion which took place at this meeting with respect to this matter?—A. With respect to Ruley?

Q. With respect to Ruley and the compensation?—A. No; I do not.

Q. Does The Temple Iron Company pay Ruley anything?—A. I do not think so.

Q. Has it ever?—A. Not to my knowledge.

Mr. Todd. In this same book I find the minutes of a meeting of the directors of The Temple Iron Company held June 27, 1900, at which the following persons were present: Messrs. T. H. Watkins, George F. Baer, W. H. Truesdale, J. S. Harris, J. R. Maxwell, E. B. Thomas, and Alfred Walter.

Among the minutes of this meeting was one appointing an executive committee of The Temple Iron Company, and I will read into the record and offer in evidence that minute:

"On motion of Mr. Baer, duly seconded, the appointment of an executive committee, consisting of the following-named persons, and with the powers hereinafter specified, was ratified by the board of directors, as follows:

"The Temple Iron Company, with the approval of the Erie Railroad Company, the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, and The Central Railroad Company of New Jersey, have appointed W. A. May, of the Erie Railroad Company; W. A. Lathrop, of the Lehigh Valley Railroad Company; E. E. Loomis, of the Delaware, Lackawanna and Western Railroad Company; W. J. Richards, of The Central Railroad Company of New Jersey, an executive committee.

"The persons above named constituting the executive committee are hereby charged with the performance of the following duties:

"1. That they shall hold stated meetings every two weeks to confer with the president and determine all questions relating to the physical management and operation of the mines of the company.

"2. When convened in executive session they shall possess all the powers of the board of directors to decide upon and direct all the mining operations of the company, including new construction, betterments, and repairs, methods of mining, and all questions of every kind pertaining to the physical operation of the mines. They shall each receive the compensation of $10 for every meeting, to be paid by the treasurer at each meeting.

"3. Whenever in their judgment betterments or improvements are necessary to be made which involve an expenditure of a sum at any one time exceeding $10,000, they shall report in writing and first obtain the approval of the board. In the absence of the president they shall elect one of their members as chairman of the executive committee, who shall possess, for the time being, all the powers of the president pertaining to the executive management of the mines.

"4. When in session as a committee, or at any time, each one of them shall have the right to receive from the officers, clerks, and superintendents any information that may be required to enable them to discharge their duties, with the right to have access to and examine all books, contracts, and accounts of the company.

"5. All instructions and directions necessary to be given shall be given through the president, or, in his absence, by the chairman of the executive committee.

"In the absence of the president, the orders of the chairman of the executive committee shall be respected and obeyed by the officers, clerks, superintendents, and employees of The Temple Iron Company.

"(Signed) LEHIGH VALLEY RAILROAD COMPANY,
"By ALFRED WALTER, *President.*
"THE DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY,
"By W. H. TRUESDALE, *President.*
"ERIE RAILWAY,
"By E. B. THOMAS, *President.*
"CENTRAL RAILROAD COMPANY OF NEW JERSEY,
"J. R. MAXWELL, *President.*

"I hereby approve of the foregoing letter of instructions to the executive committee, and confirm the powers therein conferred upon the said committee.

"(Signed) T. H. WATKINS,
"*President Temple Iron Company.*"

Q. Did this executive committee meet, and has it met every two weeks, as provided in this resolution?—A. Continuously; yes.

Q. Do you recall who its first members were?—A. Very clearly.

Q. Give them to me, please.—A. W. A. May, general manager of the Hillside Coal and Iron Company; W. A. Lathrop, general superintendent of The Lehigh Valley Coal Company; E. E. Loomis, vice-president of the Delaware, Lackawanna and Western Railroad Company; W. J. Richards, general superintendent of The Lehigh and Wilkes-Barre Coal Company.

Q. Give the names of the present members of this executive committee.—A. W. A. May, general manager of the Hillside Coal and Iron Company and the Pennsylvania Coal Company; W. J. Richards, vice-president and general manager of The Philadelphia and Reading Coal and Iron Company; S. D. Warriner, general manager of The Lehigh Valley Coal Company; E. E. Loomis, vice-president of the Delaware, Lackawanna and Western Railroad Company.

Q. How long have the present members of this executive committee been such?—A. Since June, 1901. That is when Mr. Warriner first appears as being present.

Q. Have you any connection with that executive committee?—A. I act as chairman of the committee.

Q. Since what time?—A. Since March, 1903, when I became vice-president of The Temple Iron Company.

Q. Who acted as chairman before that time?—A. For about one year, S. B. Thorne, who was the general manager of the coal department of The Temple Iron Company.

Q. Who before that?—A. Mr. Watkins, the president of the company.

Q. I hand you a book containing the minutes of the meetings of the board of directors of The Temple Iron Company from December 1, 1901, to date, marked "No. 2." Read from that book the minutes of the meeting held on February 7, 1902.—A. (reading):

"NEW YORK, N. Y.,
"*Friday, February 7, 1902.*

"A meeting of the board of directors of The Temple Iron Company was held at 143 Liberty street, New York City, on Friday, February 7, 1902, at 11.30 a. m.

"Present: Messrs. George F. Baer, Thomas P. Fowler, E. B. Thomas, and Alfred Walter.

"In the absence of the secretary, the reading of the minutes of the previous meeting was deferred.

"The resignation of Mr. F. C. Smink as a director of The Temple Iron Company was presented, and, on motion, accepted.

"Mr. R. N. Olyphant was, on motion, elected to fill the vacancy caused by the resignation of Mr. Smink, and, thereupon, took his seat as a director.

"The committee appointed at the previous meeting to investigate the subject of disposing of the product of Edgerton colliery submitted the following report:

"'NEW YORK, *February 5, 1902.*

"'THOMAS P. FOWLER, Esq.,
"'*President of the N. Y., O. & W. R. R. Co.*,
"'E. B. THOMAS, Esq.,
"'*Chairman Board of Directors Erie R. R. Co.*,
"'ALFRED WALTER, Esq.,
"'*President Lehigh Valley Railroad Company*,

"'GENTLEMEN: Pursuant to your instructions, we have considered the questions relating to the coal from Edgerton colliery of The

Temple Iron Company, and beg leave to make the following recommendations:

"'1. The output of the colliery, including all sizes of coal, should be purchased in equal proportions by the Erie, the Lehigh Valley, the Jersey Central, and the Delaware, Lackawanna and Western companies.

"'The prices to be paid for the coal should be on the basis of the old 60 per cent contracts, to-wit, 60 per cent for prepared sizes, 45 per cent for pea, 32 per cent for buckwheat No. 1, 20 cents for smaller, and $1.90 for lump.

"'3. The purchasing company should pay 10 cents per ton for lateral charges, the remainder of the lateral charge being borne by The Temple Iron Company.

"'4. The colliery should be permitted to make as much lump coal as possible, and the purchasing companies should take all the lump produced by the colliery.

"' Very respectfully yours.

"'(Signed) E. H. SAYRE,
"' G. M. CUMMING.'

"On motion, duly carried, the report was received and ordered placed on file, and it was further ordered that for the present this arrangement be accepted.

"There being no further business, on motion, the meeting of the directors was adjourned.

"(Signed) A. F. LAW, *Secretary.*"

Mr. TODD. In Book No. 3, containing minutes of the executive committee of The Temple Iron Company from July 3, 1900, to December 24, 1904, which you have produced, I find on page 16 the minutes of a meeting of this executive committee held at Scranton, Pa., November 5, 1900. From those minutes I now read and offer in evidence the following extract:

"The question of inspection and sizes was brought before the committee, and, after careful consideration of the subject, the committee unanimously recommend the adoption of the following as the standard of anthracite sizes, to be adopted only if agreed to by all the parties in interest: Grate, over 2¾-inch mesh; egg, through 2¾-inch mesh and over 2¼-inch mesh; stove, through 2¼-inch mesh and over 1⅜-inch mesh; chestnut, through 1⅜-inch mesh and over five-eighths-inch mesh; pea, through five-eighths-inch square mesh and over five-sixteenths-inch round; buckwheat, through five-sixteenths-inch round and over one-eighth-inch round.

"The present standard being as follows: Grate, over 2¾-inch mesh; egg, through 2¾-inch mesh and over 2-inch; stove, through 2-inch mesh and over 1⅜-inch; chestnut, through 1⅜-inch mesh and over three-fourths inch; pea, through three-fourths-inch mesh and over one-half inch; buckwheat, through one-half-inch mesh and over three-eighths inch; buckwheat No. 2, through three-eighths-inch mesh

and over one-fourth inch; buckwheat No. 3, through one-fourth-inch mesh and over three thirty-seconds inch.

"For standard of inspection the following is recommended:

	Bone.	Slate.
	Per cent.	*Per cent.*
Grate	2	2
Egg	4	2
Stove	4	4
Chestnut	7	6
Pea	.....	15
Buckwheat	.....	20

"The present standard being as follows:

	Bone.	Slate.
	Per cent.	*Per cent.*
Grate	2	1
Egg	2	2
Stove	3	4
Chestnut	5	5
Pea	.....	10
Buckwheat	.....	15

"On motion, the present percentage of fixed carbon in the bone of from 40 to 70 per cent was changed to 50 to 70 per cent, based on the increase of percentage of bone allowed in inspection, the increase of percentage of all impurities being based on the changes of the various sizes.

"On motion of Mr. Richards, duly seconded, the following excerpt from the Reading inspection rules was recommended for adoption:

"'None of the above sizes shall contain an admixture of a larger size sufficiently great to render the coal objectionable, nor respectively a larger proportion of any smaller sizes than is usually present in good merchantable coal, it being especially agreed that nut coal shall in no case contain more than 15 per cent of pea and smaller coal, nor an average of more than 12½ per cent of the same, and that buckwheat and pea, respectively, shall in no case contain more than 20 per cent of smaller coal, nor an average of more than 15 per cent of the same.'

"There being no further business, on motion, the meeting of the executive committee was adjourned."

Q. From some date in 1899, and thence forward for a considerable time, a large number of the shares of The Temple Iron Company stood on the books in the name of the Guaranty Trust Company of New York, did they not?—A. Yes, sir.

Q. Do you remember when they were first transferred to the Guaranty Trust Company of New York?—A. I think at the time of issue.

Q. At the time that the capital stock of The Temple Iron Company was increased from $240,000 to $2,500,000?—A. That is correct.

Q. You know at the time those additional shares were created, which was in January, 1899, that some of them were acquired by the Guaranty Trust Company of New York as trustee?—A. Yes, sir; as trustee.

Q. How many?—A. Twenty-four thousand nine hundred and fifty shares of a par value of $100 per share, March 18, 1899.

Q. Those shares stood in their name until what date?—A. December 31, 1906.

Q. When they were transferred to whom?—A. They were transferred to the Reading Company, the Reading Iron Company, and The Philadelphia and Reading Coal and Iron Company, the Lehigh Valley Railroad Company, the Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, the Delaware, Lackawanna and Western Railroad Company, The Central Railroad Company of New Jersey, and certain individuals, as appears on a list which I submitted.

Q. With respect to these shares which you say were transferred to individuals, were they transferred to them merely to qualify them as directors?—A. They paid for them. They bought them.

Q. During the time that the Guaranty Trust Company of New York held these 24,000 shares of the capital stock of The Temple Iron Company, who voted these shares at the stockholders' meetings?—A. Mr. George F. Baer, under the proxy from the Guaranty Trust Company of New York as trustee.

Q. During the interval, which you have already testified to, that Mr. T. H. Watkins was president of The Temple Iron Company, Mr. Baer was vice-president, was he not?—A. Mr. Baer was vice-president.

Q. When Mr. Watkins ceased to be president, in December, 1900, Mr. Baer again became president?—A. Yes, sir. And the office of vice-president was abolished. In March, 1903, the office was revived, and I was elected to the office of vice-president.

Q. Have the presidents of the Philadelphia and Reading Railway Company, The Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, the Lehigh Valley Railroad, the Erie Railroad, and the New York, Susquehanna and Western Railroad always been directors of The Temple Iron Company since 1899?—A. They have.

Q. During some portions of the period since then have not the presidents of the New York, Ontario and Western Railway Company and of The Delaware and Hudson Railroad Company been directors?—A. Yes, sir.

Q. Do you know whether any officer of the Pennsylvania Railroad Company or The Pennsylvania Company or the Susquehanna Coal Company has ever been a director of The Temple Iron Company?—A. No; there has never been any connection of that kind as director or officer.

Q. Or in any other way?—A. Or in any other way.

Q. Has not Mr. George M. Cumming frequently attended meetings of the board of directors of The Temple Iron Company?—A. Not frequently. He has occasionally. Up to the time of leaving the Erie service, which would be four or five years ago.

Q. He was never a director of The Temple Iron Company, was he?—A. No.

Q. Why did he attend the meetings?—A. Representing the president of the Erie Railroad.

Q. Was Mr. Cumming not present at times when the president of the Erie Railroad also was there?—A. I can not recollect that; but I think that Mr. Cumming was not there at the same time as his railroad president.

Q. What collieries have The Temple Iron Company or any of its subsidiary companies acquired since they acquired the Simpson & Watkins collieries in 1899?—A. None whatever.

Q. It has acquired other coal lands, which you have already shown in your statement?—A. Yes, sir; we have acquired coal territory under lease, as shown in statements previously offered.

Q. Does The Temple Iron Company, or any of its subsidiary companies, sell the output of any of its collieries under verbal contract at this time?—A. No.

Q. Did it ever?—A. Yes, sir; at the Edgerton colliery in the last four or five years of its life.

Q. The output of that colliery was sold to what companies?—A. the Lehigh Valley Railroad Company, the Delaware, Lackawanna and Western Railroad Company, the Erie Railroad Company, and some of it was taken by The Central Railroad Company of New Jersey, under what is practically an understanding. Never any written contract.

Q. On what price basis were the settlements made?—A. On the basis of the so-called 60 per cent contract. The reason that was sold for less than the output of the other collieries was because the quality of the coal was so poor that it was impossible to market it. It was rusty and full of slate; they were mining the thin, dirty coal, near the outcrops, which is always rusty, and it was impossible to sell it in the open market. The buyers found it impossible to dispose of it, and this arrangement was made to market the last production of the colliery. It was taken by the railroads for supply coal. That is why they bought it. One of the arrangements and one of the stipulations was that we were to make as large a quantity of lump coal for engine supply as it was possible to get out.

Q. You recall, do you not, in 1902 complaint was made to the Interstate Commerce Commission by Mr. W. R. Hearst, against the anthracite coal-carrying railroads?—A. I do.

Q. And that one of the charges in that case was that some of these railroads, at any rate, had entered into a pool or a combination through the means of The Temple Iron Company?

Major WARREN. I object to the question. We submit it is incompetent. The record ought to be produced and shown the witness before he is asked to express what a record discloses.

A. Yes, sir. I simply recall the case.

By Mr. TODD:

Q. You testified in that case, did you not?—A. I did.

Q. Were these books of the minutes of the meetings of the directors and executive committee of The Temple Iron Company, which you have produced today, produced in that case?

Major WARREN. I object to this, because it does not appear that they were ever asked for.

By Mr. TODD:

Q. Were they called for?—A. No, sir.

Q. When you produce these other papers which I have asked you to produce, will you, at the same time, produce a list of the directors of The Temple Iron Company during each year since and including 1898, supplementing those you have already furnished?—A. I will do so.

(Major Warren suggests that he will suspend his cross-examination of the witness until the Government's counsel are through with their examination in chief, which they say they are now not prepared to close until the production of certain matters which have been referred to during this morning's session.)

(Adjourned to meet at the office of the United States district attorney in New York on Wednesday, December 2, 1908, at 10.30 a. m.)

Met pursuant to adjournment at New York, Wednesday, December 2, 1908.

Present: the Examiner, and Messrs. McReynolds, Todd, Campbell, Moot, Warren, Schapperkotter, and Opdyke.

GEORGE M. CUMMING, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Please state your occupation and residence?—A. I reside at Dobb's Ferry, N. Y. I am not in business at the present time. I am a lawyer by profession.

Q. Were you at any time connected with the Erie Railroad Company?—A. Yes, sir. I was at one time general solicitor and afterwards vice-president.

Q. Please give me the dates when you were general solicitor and vice-president?—A. I was appointed general solicitor in 1896, and I was appointed vice-president the following year, I think.

Q. How long did you remain its vice-president?—A. Until January 1, 1903, if I remember rightly.

Q. As vice-president, what were your general duties?—A. My duties were not prescribed by the by-laws or by resolution of board of directors. They consisted in such work as was assigned to me from time to time by the president.

Q. What particular oversight did you have of the anthracite coal interest of the railroad?—A. At one time the general manager of the coal properties, the coal freight agent, and the coal sales agents reported to me with more or less regularity.

Q. How were you connected, if at all, with The New York, Susquehanna and Western Railroad Company?—A. I was also vice-president of that railroad company.

Q. Were you vice-president of that company during the same years you were vice-president of the Erie Railroad Company?—A. Not precisely. I became vice-president of The New York, Susquehanna and Western Railroad Company upon the acquisition of that property by the Erie Railroad Company.

Q. In what year did that acquisition take place?—A. I think in 1898.

Q. What connection did you have with the Hillside Coal and Iron Company?—A. According to my recollection, I was an official of that company. I believe director, and a vice-president, and president, at one time, of it.

Q. What connection did you have with The New York, Susquehanna and Western Coal Company?—A. My relations were the same there, if my memory serves me right.

Q. What was your connection with the Pennsylvania Coal Company?—A. I was assistant to the president at one time.

Q. Did you occupy these positions with the coal companies because of your position with the Erie Railroad Company?—A. Yes, sir.

Q. Your connection with the coal companies was during the period when you were the vice-president of the Erie Railroad Company?—A. Yes, sir.

Q. What connection had you with the anthracite coal industry before you became the vice-president of the Erie Railroad Company?—A. I was interested in coal properties in what is called the Schuylkill region. Not as an operator, however.

Q. You mean you were interested financially?—A. Yes, sir.

Q. When did your connection with the Erie Railroad Company begin?—A. I was employed by the Erie first in 1891, I can not recall the date. I was in their service for a short time, and then afterwards returned to their service in 1896, as stated above.

Q. Were you present at any of the conferences in 1899 or 1900 which finally led up to the adoption of what are called the 65 per cent contracts, under which the coal companies, controlled by the various railroad companies purchased anthracite coal from individual operators?—A. Yes, sir.

Q. Can you tell us how those conferences came about and what was their purpose and result?—A. I do not think I have any per-

sonal knowledge of the origin of the conference. My recollection is I was requested by Mr. E. B. Thomas, who was then the president of the Erie Railroad Company, to attend meetings of that so-called conference at Philadelphia in his place and as his representative. I attended those meetings. At those meetings the forms of proposed contracts were discussed with other representatives of coal carrying railroads, and also with representatives of the so-called independent operators. The result was that a form of contract was drawn which seemed to be satisfactory to all those present, and which, I think, was very generally introduced into the coal trade thereafter.

Q. Prior to the adoption of those 65 per cent contracts, were you acquainted with the contracts under which the coal companies affiliated with the Erie Railroad Company purchased anthracite coal from outside parties?—A. I was.

Q. Those contracts were upon what percentage basis?—A. They were not absolutely uniform, according to my recollection, but, I think that one may say, in general, the contracts were on a 60 per cent basis.

Q. They were also for a limited time, were they not?—A. In general, I think that is correct. Of course, we are speaking of numbers of contracts here, which differed greatly in character.

Q. Why was the change from the 60 per cent basis to the 65 per cent basis, and from the limited time contract to the contract covering the entire life of the colliery made in the year 1900?—A. Because of the insistence of the independent operators, so far as I am aware.

Q. What was that insistence?—A. They contended, as they had been contending for many years, that they were entitled to a higher percentage of the tide-water profit in order to make their operations profitable. Perhaps their insistance became more urgent at that time as the result of the increase in wages, if I remember rightly, after the first great anthracite strike.

Q. Why were the contracts made to cover the entire life of the collieries instead of a limited period as had been the rule theretofore?—A. I do not remember whether that question was discussed. My own reason for desiring that was perfectly patent, as I thought it was the interest of the persons whom I represented to have the question settled once for all.

Q. Was there unanimity of action upon the part of the representatives of the railroads in these conferences as the result of agreements between them?—A. If I understand your question correctly, there was not.

Q. You mean you did not confer with the representatives of the other railroads before you went into those conferences and come to any understanding as to what was to be done?—A. Never, according to my recollection.

Q. Do you recall that a large number of those term contracts, under which coal had been purchased by the railroad interests from independents, were expiring in the years 1899 and 1900?—A. I do not.

Q. Were you acquainted with the general terms under which coal was purchased by the companies affiliated with the railroads prior to the building of The New York, Susquehanna and Western Railroad Company into the coal regions?—A. No; I can not say that I am. I might have been at one time, but I am not at present.

Q. You know, do you not, that after that road was built, the percentage allowed to the independents, or outside operators, was larger than it was prior to that time?—A. I recall that fact.

Q. Do you remember how the change was brought about?—A. No.

Q. Whether the larger percentage was first given by The New York, Susquehanna and Western Railroad Company, and then that was followed by the other railroads, or whether they all acted at once?—A. No; I can not testify on that point.

Q. What was the percentage paid to independent operators by the railroad interests when you were first acquainted with the conditions?—A. I think that question was answered by a previous answer of mine. The percentages were very largely 60 per cent of the tide-water price, although that was not absolutely uniform.

Q. But, at an earlier date, were not the percentages still less?—A. Yes, sir; at one time, according to my recollection, they paid 50 per cent.

Q. Did you have anything to do with the adjusting of the rates for transporting anthracite coal over the Erie Railroad from the mines to tide water while you were connected with the railroad?—A. Yes. The coal freight agent was the officer immediately in charge of that, and, as I stated at the beginning of this examination, he reported to me, with more or less regularity.

Q. Were those charges a fixed and definite sum, or were they adjusted according to the price of coal at tide water?—A. Those rates were definite sums, according to my recollection.

Q. Do you mean that there was no adjustment upon the part of the railroad based upon the tide-water prices of coal?—A. I think not, according to my recollection.

Q. Your recollection is that the Erie Railroad Company charged a definite, fixed sum?—A. $1.60, for example, or whatever it might be.

Q. And that nothing was thereafter, under any circumstances, returned to the independent operators?—A. I do not remember any such return; no. I do not recall that.

Q. You went with the Erie Railroad Company before it acquired the control of The New York, Susquehanna and Western Railroad Company?—A. Yes, sir.

Q. Do you know when The New York, Susquehanna and Western Railroad Company was constructed?—A. I do not remember the date. I have known it, but it has escaped my recollection.

Q. Give us approximately, if you can?—A. I can not recall.

Q. When you went with the Erie Railroad Company in 1896, and when you became its vice-president in 1897, the New York,

Susquehanna and Western was operating a line of road from the anthracite coal region to tide water at New York?—A. It was.

Q. It was transporting anthracite coals over that line?—A. It was.

Q. Was it at that time in competition with the Erie Railroad for the transportation of coals?—A. It was engaged in the transportation of coal to tide water. The Erie Railroad was also engaged in the transportation of anthracite coal to tide water, but not from the same mines. The New York, Susquehanna and Western also sold some coal at one or two local points where the Erie Railroad also sold coal, or the subordinate, subsidiary companies of the Erie Railroad Company sold coal.

Q. You say that The New York, Susquehanna and Western Railroad Company was engaged in transporting coal from the anthracite coal mines to tide water at New York in 1897?—A. Yes, sir.

Q. Has that continued down to date?—A. It has, according to my knowledge. I have not been connected with the railroad for six years.

Q. The Erie Railroad Company, in 1897, and subsequently to that time, so long as you were with it, was engaged in transporting coal from the mines from the anthracite region to tide water in New York?—A. Yes, sir; from mines.

Q. The New York, Susquehanna and Western Railroad Company was transporting, in 1897, and had been subsequently to that time, coals from what part of the anthracite coal region to New York Harbor?—A. From what is called the upper anthracite region.

Q. That is the Wyoming region, is it not?—A. Sometimes it is so described.

Q. It is the region round about Scranton?—A. Yes, sir.

Q. From what part of the coal region was the Erie Railroad Company, during the same time, engaged in transporting coals to New York Harbor?—A. Chiefly from the upper part of that region.

Q. That would be from the region around about Scranton, too, would it not?—A. North of Scranton, chiefly.

Q. Was this coal transported at this time over The New York, Susquehanna and Western Railroad Company transported from the mines over tracks either owned or controlled and operated by The New York, Susquehanna and Western Railroad Company?—A. In general; yes, sir.

Q. Was the coal transported over the Erie Railroad transported over lines likewise controlled by the Erie Railroad Company?—A. Yes, sir; in general.

Q. What were the freight rates in 1898 over The New York, Susquehanna and Western Railroad Company for anthracite coal transported from the mines to New York?—A. That has escaped my recollection.

Q. Were not the rates when that road was acquired by the Erie Railroad Company the same as those charged by the Erie Railroad Company?

Judge MOOT. I object to the question. If the rates are a subject on which the Government must give proof under this petition or complaint, then I submit that the only competent evidence on that subject is the rate sheets, or certified copies of the rate sheets, filed with the Interstate Commerce Commission under the statute, and becoming thereby the established and fixed and only lawful rates of those railroads, and the Government may not substitute for them the guess of a witness who says he can not recollect what they were, because he has not been connected with the road for six years.

A. They were not, according to my recollection.

Q. What difference was there?—A. That I can not recollect. My recollection is that there were differences. I am led to that conclusion, because I still have a recollection that it was my purpose for several years to change the rates and make them uniform on both roads, and I never got around to it.

Q. In 1898, at the time the Erie Railroad Company acquired control of The New York, Susquehanna and Western Railroad Company, please describe the route utilized by the latter road—that is, the New York, Susquehanna and Western—for transporting coals from the anthracite regions in the neighborhood of Scranton to tide water at New York?—A. The coal was gathered from the mines which were reached by the lines controlled by the New York, Susquehanna and Western, and then brought over the Wilkes-Barre and Eastern Railroad to Stroudsburg, and from Stroudsburg to New York Harbor over the main line of the New York, Susquehanna and Western Railroad.

Q. Whereabouts on New York Harbor were they brought?—A. At Edgewater.

Q. In 1898, what was the relationship existing between what you call the Wilkes-Barre and Eastern Railroad, and the New York, Susquehanna and Western?—A. The New York, Susquehanna and Western Railroad Company, if I am not mistaken, owned all of the stock of the Wilkes-Barre and Eastern Railroad Company.

Q. Did that relationship continue during the entire time you were connected with The New York, Susquehanna and Western Railroad Company?—A. That is my recollection.

Q. The two railroads were operated as one system?—A. They were.

Q. Where is Stroudsburg?—A. Stroudsburg is the terminus of the Wilkes-Barre and Eastern Railroad, and in Pennsylvania not very far from the Delaware River.

Q. You say that the coals were gathered by various roads controlled by the New York, Susquehanna and Western before they got on to the lines which were owned by the Wilkes-Barre and Eastern?—A. That is true in part. Part of the coal, I think, was delivered directly on the tracks of the Wilkes-Barre and Eastern, and part by the gathering road, which was also controlled by The New York, Susquehanna and Western Railroad Company.

Q. Do you know what the name of that gathering railroad was?—A. It has escaped my recollection.

Q. Was it the Susquehanna Connecting Railroad?—A. Something like that.

Q. Give us the lines over which coal transported by the Erie Railroad from the mines in the anthracite region passed on its way to tide water, New York, at this same time, in the year 1898, and just prior to the acquisition of the control of the New York, Susquehanna and Western Railroad by the Erie Railroad Company.—A. Coal was received by the Erie Railroad Company at Carbondale, transported over the branch railroad, which was called the Jefferson Railroad, to Susquehanna, and thence over the main line of the Erie Railroad, and leased lines, to New York Harbor. That was one route. The second route was from Honesdale over a branch road to Lackawaxen, thence over the main line and leased lines of the Erie Railroad to New York Harbor.

Q. The coals that were transported by the Erie system from the Wyoming region passed over one or the other of those two routes which you have described on their way to New York Harbor when carried by the Erie Railroad?—A. I think that is correct.

Q. Carbondale is in the Wyoming anthracite coal region?—A. It is the most northern point of the northern anthracite coal field.

Q. Did the Erie Railroad in 1897 and 1898, during the time you were connected with it, control a continuous line of railroad from Carbondale to New York Harbor?—A. It did.

Q. Did the Erie Railroad Company during the same period control, by ownership, or by lease, or otherwise, a continuous line of railroads from Honesdale to New York Harbor?—A. It did.

Q. How did the coals that were gathered by the Erie Railroad Company at Honesdale pass from the collieries in the anthracite coal regions to Honesdale?—A. Over the railroad of The Delaware and Hudson Canal Company, as it was called then.

Q. Was there a trackage agreement in 1897 and 1898 between the Erie Railroad Company and The Delaware and Hudson Canal Company?—A. Relating to what?

Q. Relating to coal traffic.—A. A trackage agreement?

Q. Yes.—A. In regard to Honesdale?

Q. Yes.—A. I do not recall that there was any trackage agreement at that time relating to the Delaware and Hudson line terminating at Honesdale. I am very sure they had none. I think I should have recalled it if there had been.

Q. What was the arrangement under which The Delaware and Hudson Canal Company delivered coals taken up in the anthracite coal region to the Erie Railroad at Honesdale?—A. I have forgotten what the arrangement between The Delaware and Hudson Canal Company, as it was then called, and the Erie Railroad Company at that time was, in 1897 and 1898.

Q. There was some arrangement between the Erie Railroad Company and The Delaware and Hudson Canal Company, or what we

will hereafter call The Delaware and Hudson Railroad Company, for the delivery of coal by the Delaware and Hudson to the Erie at Honesdale?—A. There was an arrangement, the terms of which I have forgotten.

Q. The coal was carried on through bills of lading, under that arrangement, from the coal region to tide water, New York?—A. I think it is not incorrect to designate it in that way. The coal was manifested, carried by memorandum.

Q. What was the relationship in 1897, 1898, and 1899 between the Erie and Wyoming Valley Railroad Company and the Erie Railroad Company?—A. The legal relationship?

Q. Yes.—A. I think the only legal connection between the two, as far as I remember, is that the Erie Railroad Company owned 49 per cent of the stock of the Erie and Wyoming Valley Railroad Company.

Q. Did it acquire a larger amount of that stock while you were connected with it?—A. No.

Q. Did coals move from the anthracite region near Scranton over the Erie and Wyoming Valley Railroad to Hawley?—A. Yes, sir.

Q. And were they there taken up by the Erie Railroad Company and transported to New York Harbor?—A. Yes, sir; they were.

Q. What sort of an arrangement existed between the Erie Railroad Company and the Erie and Wyoming Valley Railroad Company for such traffic?—A. The details of that I have also forgotten, I am sorry to say.

Q. There was an arrangement for through traffic for the coals over that route?—A. Unquestionably. I have forgotten the details of it.

Q. So that in 1897, 1898, and 1899 the Erie Railroad Company took anthracite coal at Carbondale and transported it over its own lines, either leased, owned, or controlled, to New York Harbor?—A. Yes.

Q. It received from The Delaware and Hudson Railroad Company anthracite coal at Honesdale under some arrangement for through traffic, and carried that coal to New York Harbor?—A. That is correct.

Q. And it also received from the Erie and Wyoming Valley Railroad at Hawley, coals from the anthracite coal region, and under an arrangement for through traffic, carried such coals to New York Harbor?—A. That is correct.

Q. Did the New York, Susquehanna and Western Railroad connect with The Delaware and Hudson Railroad Company at any point near the anthracite coal region?—A. I have forgotten those details.

Q. Where was the Moosic Mountain and Carbondale Railroad?—A. I remember the name, but I have really forgotten where that little branch of a road was. It hardly had a right to existence. I think it was only a mile or two long, something of that sort. It went to Kemerer's Run, if I am not mistaken, but I have really forgotten all about it.

Q. Who was the operating officer of the Erie Railroad in 1898?—A. W. F. Merrill. He is still living, but not in the service at the

present time. He was second vice-president in charge of the operation.

Q. Were you acquainted with the facts relating to the projected New York, Wyoming and Western Railroad Company, of which Mr. Sturges was president?—A. The name does not come back to me. There were many projected roads in that region, names were changed about and varied, and I can not say that I remember that name. Of course, I knew Mr. Sturges, but I do not recollect that corporation.

Q. Are you acquainted with the facts concerning the projected Delaware Valley and Kingston Railroad?—A. I think I remember the name of that corporation.

Q. What effort was made that you were acquainted with by the Erie Railroad Company to prevent the construction of the Delaware Valley and Kingston Railroad?—A. My recollection is that the Erie Railroad Company, in conjunction with the Ontario and Western Railroad Company, appeared before the railroad commissioners of the State of New York, and objected to the issuance of a certificate of license to that railroad.

Q. What was the foundation for your objection on the part of the Erie Railroad construction of the Delaware Valley and Kingston Railroad?—A. That it was unnecessary, according to my recollection. That is all matter of record.

Q. That railroad would have been a competitor of the Erie Railroad, if constructed, would it not?—A. If constructed, it would have taken coal to Kingston, on the Hudson River.

Q. That would have put it in competition with the Erie Railroad Company for transportation to New York Harbor?—A. There was grave doubt about that, as to whether coal delivered at that point would be profitably carried to New York. That is the fact; if the road had been built and had gotten the tonnage, it would have taken it to Kingston on the Hudson River.

Q. And would probably have taken coal away from the Erie Railroad Company?—A. It might have done so. Not if the Erie could have prevented it.

Q. You regarded that as a possible competitor, if successful?—A. I think that may be admitted.

Q. What became of the effort to construct that Delaware Valley and Kingston Railroad?—A. The road was never constructed, and my recollection is that its construction was abandoned by reason of the acquisition of the Pennsylvania Coal Company by the Erie Railroad Company. The details I have forgotten.

Q. The Pennsylvania Coal Company at that time controlled a large amount of tonnage?—A. Very large.

Q. That tonnage from the Pennsylvania Coal Company might have been carried over the Delaware Valley and Kingston Railroad if it had been constructed?—A. It might.

Q. And, when the Pennsylvania Coal Company was acquired by the Erie Railroad, the Delaware Valley and Kingston Railroad

Company was abandoned?—A. It was abandoned after the acquisition of the Pennsylvania Company by the Erie Railroad Company.

Q. Do you know what became of the collieries formerly controlled by Simpson & Watkins?—A. Yes.

Q. State what it was.—A. They were acquired by The Temple Iron Company.

Q. Do you know what effect the acquisition of those collieries by The Temple Iron Company had upon the proposed New York, Wyoming and Western Railroad?

Major WARREN. I object to that question as incompetent.

A. I do not.

By Mr. McREYNOLDS:

Q. Did you have anything to do with the arrangements by which The Temple Iron Company acquired the collieries formerly controlled by Simpson & Watkins?—A. No. I think I did not.

Q. Were you connected with the Erie Railroad Company at the time that was done?—A. I was.

Q. Do you know that the Erie Railroad Company became interested in The Temple Iron Company?—A. I do.

Q. Why did it become interested in it?

Major WARREN. I object to that question as calling for an expression of opinion rather than a statement of fact, and as being incompetent.

A. I was not directly concerned with the negotiations, and I was never informed directly why.

By Mr. McREYNOLDS:

Q. What was your information about why the Erie Railroad Company went into that arrangement?—A. I was not consulted about it, and I do not remember that I was ever told by anyone what the purpose of that acquisition was.

Q. Who represented the Erie Railroad Company in the negotiations which led up to that acquisition?—A. Mr. E. B. Thomas, the president, and Mr. Charles H. Coster, one of the members of the executive committee, according to my recollection.

Q. Is Mr. Coster living?—A. No; he is dead. Mr. E. B. Thomas is living.

Q. Who represented the Erie Railroad Company in the purchase of the Pennsylvania Coal Company?—A. Mr. E. B. Thomas, the president of the Erie Railroad Company, and some other members of the executive committee; I have forgotten who they were.

Q. Were you not one of them?—A. I was not.

Q. Do you know the terms under which that purchase was made?—A. I knew at the time. I do not remember the details at present.

Q. Do you know how the price was fixed?—A. I do not.

Q. Do you know how the amount of stock taken by the Erie Railroad Company in The Temple Iron Company, the proportion of stock taken by it, was arrived at?—A. I never heard, or, if I did, I have forgotten.

Q. What other railroads were interested in the purchase of stock of The Temple Iron Company?

Major WARREN. I object to the Government's counsel putting a question which does not convey to the witness any caution as to his own knowledge of matters, and, especially, as it has to do with questions which he says he was not familiar with at the time. I also object to the question because it is incompetent and calls for a conclusion.

(Judge Moot also objected to this question.)

A. Of my own knowledge, I do not know.

By Mr. MCREYNOLDS:

Q. What is your information?

Major WARREN. I object to the question, first because the answer of The Temple Iron Company in this case sets forth not only who the railroads were, but the writings will disclose the form and character of the purchase and the guarantees of the Guaranty Trust Company, and they are all in the Government's possession, and this witness is now asked to state something which he says he does not know, but is a matter of guesswork, and is incompetent.

A. My information was, if my memory serves me, that the stock was owned by the Erie Railroad Company, the New York, Ontario and Western Railroad Company, the Lehigh Valley Railroad Company, and, I think, the Jersey Central Railroad Company, but I am a little doubtful, and there may have been others interested. My recollection is dim on the subject.

By Mr. MCREYNOLDS:

Q. Why did all these railroad companies, if you know, become interested in the stock of this Temple Iron Company?—A. I do not know.

Q. Have you no information on that subject?—A. I was never informed.

Q. You have no information at all on that subject?—A. I have no personal knowledge. I was not informed by any one what their object was for acquiring that.

Q. At the time of the formation of The Temple Iron Company, Simpson & Watkins controlled a number of collieries in the general section where Scranton is located, did they not?—A. Yes, sir.

Q. The output of those collieries constituted a considerable tonnage, did it not?—A. Yes; a considerable tonnage.

Q. Do you know by what routes the coal from those various collieries controlled by Simpson & Watkins could have been carried to tide water, New York?—A. I do not recall their connections. I have forgotten just at the moment.

Q. Did the Erie Railroad Company carry any of their coal?—A. I should say so. I think so.

Q. Did The New York, Susquehanna and Western Railroad Company carry any of their coal?—A. I should think not, but all this is subject to correction.

Q. Were you acquainted with the arrangements under which the Hillside Coal Company purchased coal from The Delaware and Hudson Railroad Company?—A. Yes, sir.

Q. What was the arrangement prior to July, 1902, under which that coal was purchased?

Judge MOOT. I object to the question on the ground that the Government has proved what that arrangement was, proved that it was a matter of writing, and I object to any answer by the witness as to what the contents of that writing was, as incompetent. I do not object to the witness stating, if there was any arrangement that was not put in writing, and stating what it was, if so, but, if it was in writing, then I object to any characterization of that writing by the witness. I object further, on the ground that the Government has also proved that that arrangement is a thing of the past, and that a new contract now exists, which would expire within a few months, it having been executed only for a year.

A. I have forgotten the details of that arrangement. I knew, of course, at the time.

By Mr. MCREYNOLDS:

Q. It is in the record that there was a contract entered into in writing between The Delaware and Hudson Railroad Company and the Hillside Coal Company in 1902. Do you know what that arrangement was?—A. The one which was brought into existence in 1902?

Q. No; the one prior to that.—A. I have forgotten the details of that.

Q. Do you know what the general effect of it was? Can you tell us what the general effect of it was?

Judge MOOT. I object to the question on the ground that it is certainly incompetent to ask a witness what the effect of an arrangement was which he has forgotten, according to his own answer.

A. I have forgotten the general terms of that, except I remember that the Hillside Coal Company did purchase coal from The Delaware and Hudson Company.

By Mr. MCREYNOLDS:

Q. The Hillside Coal Company purchased coal from The Delaware and Hudson Railroad Company prior to 1902?—A. I think it did.

Q. What were the terms of that purchase?—A. I have forgotten.

Q. Were they in writing?—A. Even that I have forgotten.

Q. Did The Delaware and Hudson Company, prior to 1902, as a shipper, send coal over the lines of the Erie Railroad Company from the mines to tide water, New York?—A. Yes; I think so.

Q. How was settlement made between the two railroads upon those shipments, if you know?—A. I have forgotten the details of those settlements, or the method in which it was settled.

Q. Did The Delaware and Hudson Company pay the published rates of freight over the Erie Railroad Company for coal which it sent over its lines to New York Harbor?—A. I am sorry to say

that has passed out of my recollection. I do not remember what the arrangements were.

Q. Who would know about the details concerning those shipments and the amount of freight that was collected at that time?—A. The auditor of the Erie Railroad Company, or the controller would be the person.

Q. Who are those men?—A. Mr. Wann, the auditor in charge of the accounts.

Q. Was Mr. Blauvelt then the controller?—A. No; he was an assistant at that time.

Q. Are you willing to say that, so far as you know, The Delaware and Hudson Company paid the Erie Railroad Company, without having it in any way returned to it, the full published rate for coal shipped over the Erie lines?—A. I have forgotten what our arrangements were.

Q. Do you know whether they paid the full tariff rates, or whether they did not, irrespective of the detail of the arrangement?—A. No; that is the point that I have forgotten.

Q. You do not know that?—A. I do not remember. I do not remember what the arrangements were.

Q. Are you not acquainted with an arrangement between the two railroads under which, in effect, the Delaware and Hudson got a less rate than the published rate on its coal?—A. I regret to say I have forgotten that.

Q. Were you the party to negotiate the contract of 1902 between the Delaware and Hudson and the Erie Railroad Company with reference to the purchase of coals?—A. I had something to do with it.

Q. Did that contract modify materially the arrangement which had theretofore existed between the two roads?—A. That I have forgotten.

Q. Do you know of any instance or instances in which the Delaware and Hudson Railroad shipped its coal over the lines and paid less than the published rates?—A. I do not recall any at the present time.

Q. Have you had any knowledge of such things in the past?—A. I do not recall any.

Q. Do you know what the result to the Hillside Coal Company of the contract between it and The Delaware and Hudson Company for the purchase of coal was, in a financial way; whether it was profitable or otherwise?—A. The contract of 1902?

Q. Yes.—A. I do not remember whether it was profitable to the Hillside or not.

Q. Was it your duty to know whether that contract was profitable or not?—A. Yes, sir; I think it was part of my duty, if I had any duty. After 1902, I remained with the Erie Company only until January, 1903, and consequently I was not in the service of the Erie Railroad Company for a long time after the Delaware and Hudson contract went into effect.

Q. Prior to 1902, was the arrangement for shipment of coal by the Delaware and Hudson over the lines of the Erie Railroad in writing?—A. That I have forgotten.

Q. Was the arrangement, either in writing or otherwise, which existed between them a profitable one to the Erie, counting its published freight rates a legitimate charge against the Delaware and Hudson contract?—A. I do not remember that I ever analyzed those results with sufficient care to form an opinion.

Q. I want to know whether the Erie Railroad Company did not in effect give The Delaware and Hudson Company a rebate on its shipments?—A. I have forgotten that. I do not remember it.

Q. You would have known in 1902, when you made that contract, whether the arrangements existing prior to that time had been profitable or not, would you not?—A. Theoretically I ought to have known, but I might not have known.

Q. You can not now recollect?—A. I can not recall now. No.

Q. Were you a party to establishing the scale of prices for anthracite coal at tide water in 1902?—A. I do not recollect the transaction to which you refer.

Q. Do you recall that the prices of anthracite coal at tide water, New York Harbor, were fixed in 1902 at $5 per ton for the prepared sizes?—A. I remember that that price was in effect, I think, in that year.

Q. How was that price arrived at?—A. So far as the Erie Railroad was concerned, I do not remember that there was any method pursued, except that those in charge came to the conclusion that that price could be obtained. I do not remember any machinery by which that price was arrived at, or any method. I do not recall any such.

Q. Do you not recall a consultation between the officials of the various roads that were interested at that time?—A. I do not recall any. At the present moment I have no recollection that they took place.

Q. Do you know anything about the acquisition of stock in the Lehigh Valley Railroad Company by the Erie Railroad Company and other railroad companies?—A. I remember hearing that the Erie Railroad Company and the other railroad companies had purchased stock of the Lehigh Valley Railroad Company, but I had nothing to do with the transaction.

Q. Why were those purchases made?—A. I was not informed.

Q. You have no information on this subject?—A. I was not a participant in the transaction.

Q. Do you not know any reason why it was done?—A. I was never informed. I have no personal knowledge on the subject.

Q. Did you ever attend meetings of the board of directors of The Temple Iron Company?—A. Yes, sir.

Q. Were you a member of the board of directors?—A. I think not. When I attended I was there as a guest. I think when I attended the board I was requested to do so by Mr. Thomas, the presi-

dent of the Erie Railroad Company at that time, or by Mr. Underwood, who afterwards became the president.

Q. You attended as the representative of the Erie interest?—A. I do not think that would be correct. I had no vote. I attended merely to keep informed of the business transacted at the meetings, the purposes, but, of course, as an officer of the Erie Railroad Company, under the instructions from my superior officer.

Q. Did you attend many of those meetings?—A. Not very many, I should think. That is a matter of record probably. I do not know whether my name ever appeared on the minutes as being present.

Q. It appears from the records of The Temple Iron Company that a meeting of the board of directors of that company was held at 143 Liberty street, New York City, on Tuesday, July 2, 1901, at 12 o'clock noon; that there were present E. B. Thomas, I. A. Stearns, J. S. Harris, Alfred Walter, and Thomas P. Fowler, and that on motion, duly seconded, the following resolution was adopted: "Resolved that Mr. Cumming, Mr. Sayre, Mr. Henderson, Mr. Caldwell, and Mr. Warren be appointed a committee to consider the advisability and expediency of making a 40 per cent rate to outside shippers, or a flat rate; and if so, what rate." Are you the Mr. Cumming who was appointed on that committee?—A. I assume so. I was the only person of that name connected with the anthracite companies at that time.

Q. Who was Mr. Sayre?—A. Mr. Sayre was vice-president of The Lehigh Valley Coal Company at that time, I think.

Q. Was he a member of the board of directors of The Temple Iron Company?—A. Not to my knowledge.

Q. Who was Mr. Henderson?—A. Mr. Henderson was vice-president of The Philadelphia and Reading Coal and Iron Company.

Q. Was he a member of the board of directors of The Temple Iron Company?—A. Not so far as I am aware.

Q. Who was Mr. Caldwell?—A. Mr. Caldwell was the vice-president of the Delaware, Lackawanna and Western Railroad Company.

Q. Who was Mr. Warren?—A. Mr. Warren was the vice-president of The Central Railroad Company of New Jersey.

Q. None of the members of this committee was a member of the board of directors of The Temple Iron Company?—A. Not to my knowledge.

Q. Did that committee meet?—A. My recollection on that subject is very indistinct. Until a few weeks ago I had forgotten that such a transaction ever took place. My memory, however, was refreshed by seeing my name in newspapers in connection with proceedings in this suit, and I then recalled that I had attended a meeting several years ago in Mr. Warren's office, where Mr. Warren and I think Mr. Sayre and several other railroad people were present, and that is probably the meeting which is referred to there, but I really do not remember much more about it.

Q. What was the result of the committee's meeting?—A. I do not remember. I think we discussed some questions of rates, but what action was taken, if any, I do not remember.

Q. Did the committee have a secretary?—A. I do not remember that we did.

Q. Did it make a report?—A. I have not been able to recall whether we ever made a report or not. In fact, I do not remember the subject under discussion with any distinctness.

Q. This resolution refers to the expediency of making a 40 per cent rate to outside shippers. What was the meaning of "outside shippers?"—A. I can imagine what that means. I do not know what the gentlemen had in mind, of course, necessarily, who passed that. I should think that referred to the independent shippers, shippers whose coal was not purchased by the coal companies controlled by the railroad companies. I do not remember that I ever saw that resolution before. If I had seen it I should have interpreted it in that way. I have no recollection that that resolution was ever communicated to me.

Q. You do not know whether that committee made a report or not?—A. I do not remember.

Q. You do not know what was recommended as the result of this committee's conference?—A. I do not.

Q. What was the situation, so far as outside shippers were concerned, immediately subsequent to July, 1901, with the Erie Railroad Company; what sort of rates were given them?—A. I should say offhand that they paid the regular tariff rates. And yet the situation was such that I may be in error about that. At the present time the matter is not clear in my mind. It was long ago.

Q. While you were connected with the Erie Railroad Company, at any time, was it the practice to settle with outside shippers on a 40 per cent or other basis rate?—A. I should say not, according to the best of my recollection. I think that the regular tariff rates were charged. That is my recollection.

Q. Was there not at the end of each month a discount made by which there was returned to these outside shippers anything in excess of 40 per cent?—A. I do not recollect that. That was the question you asked me a half hour ago.

Q. You do not know that?—A. I do not recall that.

Q. Do you remember whether when this committee of five, appointed under the resolution of the board of directors of The Temple Iron Company, met in Mr. Warren's office, either Mr. Thomas or Mr. Baer were present?—A. I do not remember. I think I should remember if they were. I think I am safe in saying that they were not.

Q. Where was this office of Mr. Warren's?—A. In what is called the Central Building—the office of The Central Railroad Company of New Jersey.

Q. The general offices of The Central Railroad Company of New Jersey were in that building?—A. Yes, sir.

Q. Of course, Mr. Baer had an office there?—A. I do not know whether he had an office there or whether he had an office in Philadelphia.

Q. To refresh your recollection, do you not recall that this committee of five discussed the situation, agreed upon a report, and that the substance of that report was sent to each one of the railroads represented by the gentlemen on the committee?—A. I do not recollect that at all. I do not remember what we did. In fact, as I said to you a few moments ago, I had forgotten that the transaction ever occurred, until I saw my name mentioned in connection with some testimony in this case. There was then a special circumstance connected with it which brought back to my recollection the fact that I had met.

Q. Can you tell us what that special circumstance was?—A. It was a merely personal matter.

Q. What has become of Mr. Warren?—A. Mr. Warren is now the treasurer of The Mutual Life Insurance Company of New York.

Q. What has become of Mr. Henderson?—A. I do not know.

Q. Is he connected with the railroad now?—A. I understood he had retired.

Cross-examination by Judge MOOT:

Q. You entered the service of the Erie Railroad Company first in the legal department when?—A. In 1890 or 1891, I think.

Q. At that time you had been a lawyer for how many years?—A. A great many years.

Q. If I remember correctly, you were one of the professors who were instructing the law students at Columbia University prior to entering the service of the Erie Railroad Company; is that correct?—A. The second time; yes, sir.

Q. The first time you entered their service in the law department you were connected with legal work entirely?—A. Yes, sir; entirely.

Q. Who was the head of the legal department at that time, under whom you served?—A. Mr. Buchanan.

Q. About how long were you with the Erie Railroad Company at that time?—A. Less than a year.

Q. Who was the president of that company then?—A. Mr. John King.

Q. He died some years ago?—A. Yes, sir.

Q. The Erie Railroad Company, as we call it, was then the road of which the legal name was the New York, Lake Erie and Western Railroad Company?—A. Yes, sir.

Q. Did you continue in their service until they went into the hands of a receiver?—A. No, sir. They were still on an independent basis when I left their service the first time.

Q. But they passed into the hands of receivers very shortly after you left?—A. Very shortly after I left.

Q. When you returned to their service did you return again to their service in the legal department?—A. I did.

Q. In what capacity?—A. As general solicitor.

Q. You took charge of their legal work as general solicitor as the successor of whom?—A. Of Mr. Buchanan, I think. Mr. Buchanan had died in the meantime.

Q. What, about, was the time when you came back?—Early in 1896.

Q. Had the New York, Lake Erie and Western Railroad Company passed through a receivership and foreclosure and sale and a reorganization between the time you were in their service before and the time that you returned to the service of the Erie Railroad Company so called?—A. It had.

Q. So that you came there in 1896 as their solicitor, and took charge of their law work, finding a new or reorganized corporation that had followed wreckage, foreclosure, and sale?—A. I did.

Q. For about how long a time after you came back in 1896 was your work confined to the law work committed to your care?—A. Perhaps a year.

Q. Then did you take on other duties, too?—A. Yes, sir.

Q. In what department?—A. As I stated in my examination in chief from time to time, there were duties from time to time, the managers of the coal companies and the coal freight agent, and the selling agents, and some other officers were directed to report to me, and they did so, with more or less regularity.

Q. Did you in turn report to anybody at the same time?—A. I did.

Q. To whom did you report?—A. To the president, Mr. Thomas, and after his retirement to Mr. Underwood.

Q. To what extent in those duties did you act on your own volition or initiative and to what extent did you act only after reporting to the president, whoever he might be, and after consultation with him?—A. Substantially in all important transactions I acted after consultation with the president.

Q. Your function then substantially was to keep yourself informed sufficiently for the purposes of consultation with the president?—A. Very largely.

Q. And for the purpose of advising with him and advising him, and for the purpose of carrying out his instructions after such consultations?—A. Very largely.

Q. Does that answer hold good from that time on down to the time you ceased to be connected with the Erie Railroad Company management?—A. Substantially.

Q. Had other duties been added in other departments, so far as you recall, generally speaking?—A. The general solicitor continued to report to me, and one or two other officers.

Q. The general solicitor then, during the time of your connection with the Erie Railroad Company, practically reported to you in the same way that you did to the president, and on important matters took your instructions as to what he should do?—A. Yes, sir.

Q. You said one or two other officers. Who were they?—A. The freight traffic manager and the general passenger agent.

Q. Who was the freight traffic manager, if you remember, who reported to you?—A. Mr. Harriott, and afterwards Mr. Chamberlain, as his successor.

Q. And the passenger agent was whom?—A. Mr. Roberts, and subsequently Mr. Cook.

Q. Did all these various things keep you pretty busy?—A. Yes, sir.

Q. In doing this work was it your habit to keep any memoranda touching the work you did, or did you take it up, consider it, finish it, and put it aside in each case?—A. My office, in general, was not an office of record, the records being preserved by the other officers who reported to me.

Q. Then you acted much as a lawyer does in getting your information, using your judgment about it, having your consultations, making your determinations, and allowing the records to be kept elsewhere?—A. That is correct.

Q. Are you, in the testimony you have been giving to-day, speaking from a recollection refreshed from papers or memoranda, or are you speaking simply from a recollection unrefreshed from them?—A. Entirely unrefreshed. I have had no access to the records or papers of any kind.

Q. Since leaving the Erie Railroad Company?—A. Since leaving the Erie Railroad Company, I think, is correct.

Q. That was in January, 1903?—A. Substantially six years ago, January, 1903.

Q. Was it the beginning of January or the end?—A. The 1st of January, I think. About January.

Q. From the time that you became connected with the present Erie Railroad Company, in 1896, down to the time you ceased to be connected with it, did you know of any combination, conspiracy, agreement, or arrangement to which it was a party, or its officers were parties, to restrain competition of trade in any way, shape, or form?—A. I did not.

Q. Or to affect rates?—A. I did not. I was not aware of such.

Q. Or prices?—A. No, sir.

Q. As a lawyer, it was your duty, either while acting as solicitor, or while acting as vice-president and supervising the work of the solicitor who reported to you, to advise the officers of the Erie Railroad Company as to what the law was, and to keep them from violating the law, if advice would keep them from doing it. During that time did you learn of any violation of the so-called Sherman anti-trust act by any of them?—A. I did not.

Q. You were asked about the 65 per cent contracts which came into being, as I understood you, just after the strike of 1900, or the strike sometimes called the Mark Hanna strike?—A. Yes, sir.

Q. Do you remember who first suggested a change from the 60 per cent contracts, or the contracts that had existed, to the 65 per cent

contracts that afterwards came into existence; whether it was the railways or the independent operators?—A. The independent operators made the suggestion.

Q. About how long, weeks or months, did you say the negotiations continued before this form was finally drawn that you said seemed to give satisfaction to the members of the committee on both sides, and to finally come into use?—A. My recollection is that the negotiations were protracted, covering a long period.

Q. Some months?—A. Some months, I should say.

Q. Have you any recollection about who the active men were in behalf of the independents on the one side and in behalf of the railroad coal companies or purchasing companies on the other side in these negotiations. Or were there no particular ones who were more active than others?—A. I do not recall that any were more active than others. Doctor Howe and one or two other gentlemen represented the independent operators at the conferences when the terms of the contract were discussed.

Q. Have you any recollection now as to the point most pressed by the members of the committee for the independent operators in the way of a change desired by them?—A. I think, beyond all question, the most important feature was the change to 65 per cent.

Q. What argument or statement by them can you recall as one advanced as a reason for making the demand?—A. The reason for urging the demand at that time was that the railroad companies had recently increased the price of labor 10 per cent or more and, thereby, that forced the independent operators to increase their wage scale to a like amount, and consequently diminish their profits unless they could receive a larger percentage of the tide-water price.

Q. Do you mean by that that in the settlement of this strike of 1900 an advance in wages of 10 per cent had been made without the assent of the independent operators, and that they had got to follow that advance up?—A. I think that is correct.

Q. Do you recall anything as having been urged by members of the committee who represented the railroad coal companies, so to speak, as something that ought to be conceded by the independent operators who were to sell their coal, if the 65 per cent was to be conceded to them?—A. Yes, sir. The negotiation was one, of course, of concession on both sides, and naturally the principal concession made by the independents—as I recall, the independent operators made a number of important concessions, among others of course consenting to make the contracts continue during the life of the collieries. There were numerous other concessions on both sides. It was a matter of bargain and sale and give and take.

Q. As I understood you on your direct examination, you said that you did not recall that the matter of the life of the contracts was a matter discussed; but you, at least for yourself, felt that it was a question that ought to be settled once for all?—A. That was my own reason; yes, sir. That is a correct statement. I do not remember that we actually discussed that point.

Q. Was the matter of standardization of sizes, and of how the prices should be fixed to tide water, discussed, as far as you remember?—A. Oh, yes; they were discussed at great length.

Q. If you can recall, was it the representatives of the purchasing coal companies, or the representatives of the selling coal companies, who were insistent upon a better standard of proportion, and upon a broader basis for fixing prices?—A. I think Doctor Howe and his associates were the ones who insisted to a greater extent upon those points than the representatives of the railroad companies.

Q. You think so?—A. I think so. That is my recollection.

Q. So as to remove causes of difference in the past?—A. That is my recollection.

Q. There had been differences in the past over those points?—A. Yes, sir; a great many.

Q. And litigation?—A. In a general way, I should say so, though I could not specify any at present.

Q. Speaking from your own recollection, did you or the other representatives of the purchasing coal companies have any judgment as to whether it would be wise in the interest of everybody to have those points settled, if possible?—A. Speaking for myself, and I think that was the feeling of the others, we thought it was very wise that all those points should be settled at that time once for all, if possible.

Q. And was it because there were so many differences upon those various points that had to be discussed that you had to have so many meetings and negotiations for so many months before you got to a point where you could draft a new contract to take the place of the old contract, that seemed to be satisfactory to the members of the committee on both sides?—A. I think that is correct.

Q. I understood you to say that in those meetings, so far as you know, the representatives of the purchasing coal companies went to the meetings from time to time, exercised their own judgment, and so on, without consultations or arrangements or understandings in advance of so doing?—A. Most emphatically, so far as I know. It was certainly true with myself.

Q. Do you remember whether any 50 per cent contracts or any 55 per cent contracts were still in being when you came to have personal knowledge of this coal business?—A. I should say that some of them were still in existence, but I do not recall the details.

Q. In what you have said this morning about these 50 per cent contracts and these 55 per cent contracts, were you speaking from personal observation and knowledge, or rather from what you picked up from time to time, either as counsel or otherwise, in a historical way?—A. The latter is correct, I think, in general.

Q. When you come down to the 60 per cent contracts, I infer your own business connection with the matter gave you some personal knowledge of them?—A. Yes, sir.

(At 1 o'clock a recess was taken until 2 o'clock p. m.)

Q. On this subject of the basis of the tide-water price, do you remember what sellers of coal were specified in the old 60 per cent contracts of the Hillside as the sellers whose tide-water prices should be considered for the purpose of ascertaining the tide-water prices under those contracts?—A. My recollection is that the old contracts specified only two or three sellers whose prices should be taken into consideration in making up the average.

Q. And those two or three, according to your recollection, did they differ, or were they some particular ones?—A. No; they were particular ones. I can not recall the names now. I know that the question was up when we were modifying the contracts, and at the instance of the independents the basis was considerably widened and broadened so that practically all the large sellers were considered in forming the new basis.

Q. Were they sellers in each region or in different regions, or were they grouped together?—A. All taken together on the New York basis.

Q. Mr. Todd has annexed to the petition in this case what seems to be a copy of the formal part of this 65 per cent contract as generally adopted and executed, with minor modifications, and on that point I call your attention, for the purpose of refreshing your recollection, to the second article.—A. In referring to this copy of the 65 per cent contract, I recall that the previous answer was as stated here, "For all sizes above pea coal 65 per cent of the general average free on board prices of said sizes received at tide points at or near New York between Perth Amboy and Edgewater, computed as hereinafter provided to be the basis." A provision for the computation was inserted later. It is also provided in article 3, as I find upon refreshing my recollection by referring to the form of agreement before me, "That the general average f. o. b. prices herein referred to shall be determined by a disinterested expert accountant, satisfactory to both parties, to whom the buyer shall furnish, not later than the 8th of each month, a statement of the quantity of each size sold during the preceding month and the amount realized therefor by the buyer at tide on all sales of each size of coal from the region, and the accountant in each month shall make a true average price for each size sold at tide of all the coal from the same region, and the average prices thus obtained shall be furnished by the accountant to the buyer and seller, by whom they shall be accepted," and so on.

Q. Having that copy annexed to this petition of the Government before you, tell me, please, whether any other or different arrangement than that shown in that document was agreed upon or arranged for between the members of the committee, according to the best of your recollection.—A. No; no different arrangement was agreed upon.

Q. Did you attempt yourself to fix any prices whatever any farther than you thus ascertained the basis upon which prices should be adjusted in settlement between the seller and buyer?—A. We did not.

Q. In a question put to you by counsel for the Government, inadvertently, I think, he spoke of the Erie Railroad Company buy-

ing coal. Did the Erie Railroad Company itself ever buy any coal, so far as you know, under any of these contracts, or otherwise, while you were there, except the coal which it buys for its engines?—A. My recollection is that the purchases were made by the Hillside Coal and Iron Company generally.

Q. The Erie Railroad Company itself then made no purchases, so far as you can recollect, except for its own engines?—A. I think that was the case.

Q. Something was said about the percentage being larger after the New York, Susquehanna and Western Railroad was built, and you said in answer to counsel that while you had known in a general way when it was built you could not now state from recollection when it was built. To what period of the building of that road or after the building of that road did you refer in what you said about the prices being larger? Or did you have any definite period in mind?—A. What I had in mind, if my recollection serves me, was an increase in price occurring after the opening of the Wilkes-Barre and Eastern Railroad. I think an increase in price took place after that.

Q. Would you be able to state when that opening took place?—A. No; I could not recall the date.

Q. Do you know whether it was opened before or after you came to the Erie Railroad in 1896?—A. Before.

Q. But you could not say how long before?—A. No; I have forgotten.

Q. I show you map of what is called the Wyoming region, which you say is divided, if I understood you correctly, into the upper and lower?—A. Sometimes described as the Lackawanna region above and the Wyoming region below.

Q. In this case, for our purposes, it has been described as Wyoming region.—A. I referred to it as the upper region generally, as compared with the Lehigh, the middle region, and the Schuylkill or southern anthracite region.

Q. Do you know anything about the middle region or the Lehigh region and the Schuylkill or southern region?—A. I do.

Q. In these operations of the Erie Railroad Company or the New York, Susquehanna and Western Railroad Company did you have anything to do with either of those regions?—A. Neither. That is, nothing to do with the Lehigh region, the middle region, or the southern region, the Schuylkill region.

Q. So far as you were connected with the Erie Railroad or the New York, Susquehanna and Western Railroad, you had to do only with the region which we call the Wyoming region?—A. The upper part of that region; yes.

Q. As I understand you, the Erie Railroad Company got the coal from this field, which it drew to New York, in the main from three points, Honesdale, Hawley, and Carbondale. Is that correct?—A. Yes, sir.

Q. I understood you that it got the coal that it took from Honesdale from the Delaware and Hudson? The Delaware and Hudson brought it there for the Erie Railroad?—A. Yes, sir.

Q. That the coal it got from Hawley was coal sent there, as I understood you, by the Pennsylvania Coal Company over the Erie and Wyoming Valley Railroad?—A. That is correct.

Q. And the coal that it got at Carbondale, perhaps I did not get a clear idea of how the Erie Railroad got that coal?—A. At Carbondale it received the coal largely from the mines owned by the Hillside Coal and Iron Company at Forest City and between Forest City and Carbondale.

Q. I infer, and you may state if that is the fact, that the Erie Railroad Company would not have paid The Delaware and Hudson Railroad Company to bring coal to Honesdale for it in any way, shape, or form if it had had any way of reaching that coal over its own tracks and getting it for itself. Is that correct?—A. I think that is correct.

Q. And in some way, as I infer, it did pay The Delaware and Hudson Railroad Company for bringing that coal to it at Honesdale?—A. Yes.

Q. Do you now recall how it paid it, whether it paid it a prorate or a through rate, or whether it paid a lateral charge or a specific charge per ton, or how the business was done?—A. I can not trust my memory to state the arrangements which existed before 1902, when the latter contract was made.

Q. And that contract will speak for itself?—A. That contract shows for itself, of course.

Q. There was nothing outside of the contract on the subject, as far as you can recall? Everything was put in the contract in 1902?—A. That is my recollection.

Q. The coal coming by the Erie and Wyoming Valley Railroad from the Pennsylvania Coal Company came from Scranton by nearly direct route to Hawley, being a much shorter route than it would follow if it went by way of Carbondale?—A. Very much shorter.

Q. And the more natural route?—A. Yes.

Q. I assume, and you may state what the fact is, that the Erie Railroad Company, either by prorating the rate, or by paying a lateral charge, or otherwise, paid the Erie and Wyoming Valley Railroad Company for gathering that coal at the mines and bringing it from the Pennsylvania Coal Company down to Hawley and delivering it to the Erie there to go to tide.—A. There was such an arrangement. I have forgotten the details of it now.

Q. In some way it did pay the Erie and Wyoming Valley Railroad Company for doing that?—A. It did.

Q. If that coal of the Pennsylvania Coal Company was to go west instead of going to tide, would it still go over the Erie and Wyoming Valley Railroad to Hawley in order to get west, or would

it move in a different direction?—A. No; it would then move by Carbondale and Forest City naturally, and the Jefferson Valley.

Q. And to move by way of Carbondale and Forest City, would it move over the Erie Railroad tracks all the way, or would it have to move over other tracks some of the way?—A. Over other tracks as far as Carbondale.

Q. What other tracks?—A. The Delaware and Hudson Railroad.

Q. And for moving it over the Delaware and Hudson, either the shipper or the Erie Railroad Company would have to pay a lateral or prorating charge, would they not?—A. Yes, sir.

Q. And they did, as matter of fact?—A. Yes, so far as Pennsylvania coal went west. I do not remember that a great deal of Pennsylvania coal went west.

Q. You can not remember, of course, what the amount was that was so paid?—A. No; I do not recall the details.

Q. I suppose you can not remember, for instance, whether the Erie Railroad Company and the Erie and Wyoming Valley Railroad Company filed a joint rate of tariff with the Interstate Commerce Commission on this coal?—A. I do not remember.

Q. You could not remember either whether the Erie Railroad Company and The Delaware and Hudson Railroad Company filed a joint rate for their movement with the Interstate Commerce Commission?—A. I do not remember distinctly; no. In both cases I have no doubt the law was complied with.

Q. So far as the Delaware and Hudson or the Erie and Wyoming Valley were concerned, as they operate wholly in Pennsylvania, if the Erie Railroad Company paid them a straight lateral charge for gathering and delivering coal to it, there would be no occasion for a joint tariff to be filed?—A. No; there would be no occasion.

Q. Whether one was filed or not would depend somewhat on the arrangement?—A. On the course of the business, too.

Q. You have forgotten?—A. I do not remember.

Q. This coal that came to Honesdale, if any of it was intended for the West, would that naturally be moved to Honesdale?—A. Oh, no. We never receive any western coal at Honesdale. That is, coal for the West. We call it western coal.

Q. That coal which came to Honesdale, as you recall, was intended for tide water?—A. Or local points, yes. Tide water and intermediate stations.

Q. Would there have been any way for the Erie Railroad Company to handle the coal that came to Honesdale over its own tracks, without using the tracks of the Delaware and Hudson and paying that company for using them?—A. I think not.

Q. In the case of the coal coming to Carbondale, if that coal was to move west, would the Erie Railroad Company be able to move it from Carbondale west over its own tracks, or would it have to use other tracks?—A. Entirely over its own tracks to Buffalo and Chicago.

Q. What are the divisions or trackage called over which it would move?—A. It would move from Carbondale over what was called the Jefferson Railroad to the connection with the main line near Susquehanna, Lanesboro, and thence west over the main line of the Erie Railroad to Buffalo, or over the main line of the Erie Railroad and its subsidiary companies to Chicago.

Q. What you call the Jefferson branch was an independent railroad, of which the Erie Railroad Company owned the majority of the stock, and of which it had a lease, or over which it had trackage rights of some kind?—A. I think that is correct; yes.

Q. Was that Jefferson branch, running from Carbondale to Lanesboro, over which the western coal would naturally move, a natural railroad track over which to move any of the coal moving to tide water?—A. Yes; for coal mined in the vicinity of Forest City and Carbondale.

Q. But if the coal was mined farther south than Carbondale or Forest City, how was it then?—A. It was always a question whether it was advisable to give that to the Delaware and Hudson and have it deliver it to the Erie Railroad at Honesdale, or to have the Delaware and Hudson deliver that coal to the Erie Railroad at Carbondale. The decision of that question always depended upon what arrangements could be made, whether they were favorable or unfavorable, with the Delaware and Hudson for the local movement.

Q. Was there any way for the Erie Railroad Company to move that coal to tide over its own tracks without using the tracks of some other company?—A. No; not for coal south of Carbondale.

Q. Then I infer, as a practical matter, although the Erie track reached this region, that, for some reason or other, it was necessary even for the Erie Railroad to use other railroad companies, or other tracks, to haul its coal to tide, as to the bulk of this coal? Is that correct?—A. As to coal south of Carbondale; yes, sir.

Q. That would be the bulk of their coal traffic, would it not? It would be produced south of Carbondale, would it not?—A. I think not. I think that a larger amount of the Hillside coal, which was a company controlled by the Erie Railroad, was produced at Forest City and Carbondale, rather than south.

Q. I am speaking in a broader sense than that; I am speaking of the entire anthracite tonnage moved by the Erie Railroad Company to tide water. I am asking you, looking at the entire anthracite tonnage, no matter who owned it, whether more of that tonnage was not moved over these tracks of other companies to get to tide water than was moved over the Erie Railroad Company's tracks all the way to tide?—A. Yes, sir; I think that would be the case.

Q. Naturally all the coal of the Pennsylvania Coal Company would move to tide over the Erie and Wyoming Valley Railroad Company's tracks?—A. Yes, sir; it so did.

Q. And do you have any recollection of what that tonnage was?—A. No; but it was very large. It was a very large tonnage indeed.

Q. So far as you can recall, while you were connected with the Pennsylvania, did any other railroad company handle any of that Pennsylvania coal, except the Erie Railroad Company, in connection with the Erie and Wyoming Valley Railroad Company?—A. I think not.

Q. You were the natural outlet for that coal?—A. Yes, sir.

Q. The Hillside Coal and Iron Company, their operations were practically confined to the region between Forest City and Carbondale, were they not, or in that vicinity?—A. The majority. We had one or two collieries south of Carbondale. But its most important operations were in the neighborhood of Carbondale and Forest City.

Q. And those operations were reached by the Jefferson branch, were they?—A. Yes, sir.

Q. Were they reached by any other branch of the Erie Railroad?—A. No.

Q. If that coal of the Hillside Coal and Iron Company was going west, it would be natural for it to take the tracks of the Jefferson branch of the Erie Railroad until it reached the main line, and then go on west over the Erie Railroad Company's rails?—A. Yes, sir.

Q. If it was going east, however, it would be natural for the coal to move over the Delaware and Hudson to Honesdale, would it not?—A. Yes, sir. It might have been so. As matter of fact, I think all of that north coal, both for east and west, was brought over the Jefferson branch.

Q. You think the majority did move over the Jefferson branch?—A. Yes. Although it was somewhat longer; owing to the fact that favorable arrangements were not made with the Delaware and Hudson. Naturally we would have taken the shorter route.

Q. If you could have made sufficiently favorable arrangements with the Delaware and Hudson, you would have sent it over the Delaware and Hudson tracks to Honesdale as the shorter route?—A. Yes, sir.

Q. You could have saved a good many miles that way?—A. Yes, sir.

Q. Have you any idea how many?—A. My impression is more than 50 miles. I have forgotten the mileage.

Q. According to your recollection, as those arrangements with the Delaware and Hudson were too expensive and not satisfactory, the Erie Railroad Company found it more satisfactory, or cheaper, if you choose, to handle it over this longer trackage of its own rather than to pay the trackage charges of the Delaware and Hudson?—A. Yes, sir.

Q. The coal then that the Delaware and Hudson brought to the Erie Railroad Company was coal that the Delaware and Hudson gathered either at its own mines or at the mines of the operators upon its lines? Is that correct?—A. Yes. My recollection is that the coal was all its own.

Q. You think it was all its own coal?—A. I have no recollection of the Delaware and Hudson gathering coal from independent operators.

Q. And it was upon that coal coming from its own mines that the Erie Railroad Company paid either a prorate or a lateral charge, or some compensation, to the Delaware and Hudson for gathering it with its engines and bringing it down to Honesdale?—A. Yes.

Q. Was that portion of the coal that came to tide water being bought by the Erie Railroad Company when you first came to know about this coal business, or was it simply being brought to tide water by the Erie Railroad Company?—A. At first I think it was simply transported to tide water by the Erie Railroad Company.

Q. And later was it bought by the Erie Railroad Company?—A. Yes; by the Hillside Coal and Iron Company, the Erie Railroad Company, or subsidiary companies.

Q. The Erie, as I understand you, itself never bought it, but it was bought by the Hillside Coal and Iron Company?—A. That is my recollection.

Q. Have you any recollection of about the time when the Hillside Coal and Iron Company first began to buy this Delaware and Hudson coal?—A. The first purchases in large amounts, I think, were the result of the contract of 1902—that is, of very large amounts.

Q. Do you recall now whether that contract was negotiated before the strike of 1902, or after?—A. I have forgotten.

Q. The strike of 1902, if it was negotiated before, came into being soon after it was negotiated and stopped operations under it for a long time?—A. Yes. That would be my recollection.

Q. So that there were very few operations under it practically while you were connected with the Erie Railroad Company, or its coal companies?—A. Yes, sir. Comparatively speaking.

Q. So that you did not have the opportunity in normal times to ascertain how that contract would work out, whether profitably or unprofitably?—A. That is correct.

Q. Do you remember now what the controlling consideration was in your own mind in determining that would be wise for the Hillside Coal and Iron Company to enter into that contract with the Delaware and Hudson Company?—A. Yes.

Q. What was the controlling consideration in your mind?—A. According to my judgment, the reason for entering into that contract was that whether a profit was made on the coal or not, the Erie Railroad Company would probably derive a profit from the transportation of the coal.

Q. The Erie Railroad Company had its tracks anyway?—A. Yes.

Q. It had its engines and cars and crews to maintain anyway?—A. Yes; and it had a very large business moving in that direction.

Q. It had interest charges to pay anyhow?—A. Yes, sir.

Q. And it had to maintain its tracks anyhow?—A. Yes.

Q. Under those circumstances, if it could buy, or if the Hillside Coal and Iron Company could buy that coal at a price that would more than return the bare cost of transportation, it might be advisable to make the contract?—A. That was my view.

Q. That was the controlling consideration with you?—A. It was.

Q. You believe then in Professor Hadley's idea, that if you can get a half car of oysters at one point at 75 cents and a half a car at another point at 50 cents, thus making the carload, and there will be a profit on the entire carload, although a loss on the 50 cent part of it, that it may be an advisable railroad contract?—A. Yes, sir; under certain circumstances.

Q. Did you ever have control of what may be called the operating department of the Erie Railroad Company?—A. At times the operating officers reported to me. I had a good deal to do with the operating department.

Q. That is, the traffic manager, I understand, reported to you?—A. Yes. It was a matter of regular routine.

Q. What other operating officer reported to you?—A. Mr. Merrill, second vice-president, reported to me, in the absence of the president, and, also, at other times, to a greater or less extent.

Q. When you come down to the more technical operation, such as distributing cars, giving orders about motive power, about cars, about repairs, about maintenance of track, with regard to the time of crews, and everything of that kind, did you have anything to do with those matters?—A. Very little.

Q. Did you ever become what might be called an operating expert in those matters?—A. Not on the Erie Railroad. I was an operating officer on other railroads.

Q. Afterwards or before?—A. Before.

Q. You never did enough of that on the Erie Railroad so that you could claim to be expert as to its operating conditions?—A. I should hesitate to say so.

Q. You spoke of the differences, and said you could not remember what they were, but you thought there were some differences between the rates on the New York, Susquehanna and Western Railroad and the Erie Railroad in 1898, and you intended to take the matter up and adjust those differences, and, as I understood you, you never got around to it?—A. That is my recollection.

Q. You can not give us any more light on that subject, I infer?—A. No; I do not recall any of the details. I can not remember the differences. I am very sure the differences did exist, but I do not recall what they were, or how important.

Q. I got the impression from that answer that your own recollection was that the differences were rather slight instead of being very large. How is that?—A. They could not have been very important. Otherwise I should have attended to it more promptly.

Q. Did you have charge of building any connections from the Erie Railroad, or any of its branches, to any mines while you were

connected with this business in any way, as far as you remember?—A. I do not recall such a case at the moment.

Q. Do you remember whether the coal tonnage of the Erie Railroad Company increased during your connection with the Erie Railroad Company, or whether it decreased, or how it was in that respect?—A. It increased.

Q. In normal times?—A. Yes, sir.

Q. So far as you and the orders you gave are concerned, what were you trying to do, increase it, decrease it, or keep it about the same?—A. My own efforts were constantly directed toward increasing the coal movement on the Erie Railroad.

Q. If there was any profit in business, the more you carried, the more you would get?—A. So we believed.

Q. Did you know of any effort on the Erie Railroad Company by anyone during your connection there to decrease it or to keep it at a standstill instead of increasing it?—A. No such effort was ever made in my time, to my knowledge.

Q. Something was said about the coal of The Delaware and Hudson Company being carried by the Erie Railroad Company on a through bill of lading. That was part of the question of the counsel for the Government, and it was put in such a way that apparently your answer would mean that it was carried on a through bill of lading. Do you know how that was?—A. I answered that it was carried through, but manifested. My recollection is it was manifested; that is, merely a memorandum of the shipment sent through with the coal.

Q. In other words, instead of there being a through bill of lading from the place where the coal originated, The Delaware and Hudson Company brought it to Honesdale on a memorandum?—A. On manifest.

Q. Showing what was to be done with it?—A. Yes, sir.

Q. Then the Erie Railroad Company made its own bill of lading, did it?—A. Yes, sir. Or else issued another manifest. Very little of that coal was shipped, as I remember, on a bill of lading, strictly speaking. It was nearly all manifested, which was merely a memorandum of shipment.

Q. In other words, this coal was moved first by the Delaware and Hudson on its own memorandum for the guidance of its own employes in handling the car, and then by the Erie Railroad Company on its memorandum for the guidance of its employees in handling the car?—A. I think so.

Q. Or else the Erie Railroad Company employees handled it by the memorandum of the Delaware and Hudson?—A. Yes.

Q. Without any bill of lading at all?—A. That is my recollection.

Q. Do you remember anything about who furnished the cars in which this Delaware and Hudson coal that came to tide over the Erie Railroad Company was hauled? Do you remember whether the Delaware and Hudson furnished their own cars?—A. Not entirely.

My recollection is that part of the cars were furnished by the Delaware and Hudson, but the cars were mostly furnished, according to my recollection, by the Erie Railroad Company. I think that trade very largely depended upon the ability of the Erie Railroad Company to furnish cars.

Q. The Delaware and Hudson Railroad Company furnishing simply the motive power to move it to Honesdale, and then turning it over to the Erie Railroad Company to hitch their own motive power on at that point?—A. Yes, sir. Comparatively few cars of the Delaware and Hudson were used in that business, I am very sure. I have not thought of this for years, but my recollection is very clear that very few of the Delaware and Hudson cars came to tide water.

Q. Do you remember whether these cars were delivered, so to speak, in driblets, at Honesdale, or whether the Erie Railroad Company got practically trains of cars day after day from the Delaware and Hudson at Honesdale?—A. The latter was the case.

Q. Speaking from your general knowledge of railways, where is the great relative expense in railway operation; in moving trains of cars brought to a point and turned over in that way to be moved, by an engine and crew, or in gathering those cars up at different points and getting them together in trains?—A. The economical movement is, of course, by the large trains received at a single point.

Q. And the expensive operation to a railroad is what?—A. Is the gathering—the gathering and consolidation of the business, very largely, aside, of course, from the expense involved in the maintenance of the terminals.

Q. The expense to the Erie Railroad Company, then, would be for the trackage, the engines and crew, and the maintenance of the cars they furnished to move the coal?—A. Yes, sir.

Q. The expense to the Delaware and Hudson would be for the spurs or connections to the mines, the engines and crews to take the cars to the mines and bring them back from the mines, and the time consumed in picking those cars up, one or two or three, or five, whatever they may be, at the different mines, and getting them together to move to a place like Honesdale?—A. That is a correct description; yes.

Q. Was there any grade for The Delaware and Hudson Company to overcome in getting this coal to Honesdale, or was it an easy grade?—A. A very heavy grade.

Q. From where to where?—A. Over a mountain just beyond Honesdale there, I have forgotten the name of the station, on the Delaware and Hudson, where the grade began, and there was a very expensive piece of track to operate there.

Q. So that the Delaware and Hudson, so to speak, lifted these cars out of the Wyoming Valley, over a mountain, down to Honesdale, which was in another valley?—A. Yes.

Q. That you say was an expensive operation?—A. Very expensive.

Q. From Honesdale to New York, how was it? Were there any

more mountains to climb?—A. There was one very heavy grade beginning at Port Jervis, east bound. With the exception of that grade, however, it was a very economical movement.

Q. The Wilkes-Barre and Eastern Railroad Company is the line that runs from Stroudsburg, in Pennsylvania, to Ashley Pond, south of Wilkes-Barre, in the southern part of the Wyoming region?—A. Really to Wilkes-Barre. It is the line from Wilkes-Barre to Stroudsburg.

Q. That line is removed from the Erie Railroad line to the north a distance of about how many miles, roughly speaking?—A. A distance of in the neighborhood of 60 miles, I should think, at the widest point.

Q. And the most northerly point of the Wilkes-Barre and Eastern or the New York, Susquehanna and Western connecting link there was separated about how far from the most southerly point reached by the Erie Railroad, or its branch?—A. About 25 miles, I should think—20 or 25 miles.

Q. Were there any tracks controlled or subject to the orders of the Erie Railroad Company between those two points for about 25 miles in this Wyoming Valley where coal was mined?—A. I think not at the time of the acquisition of The New York, Susquehanna and Western Railroad.

Q. Did the Erie Railroad Company have any way of getting coal out of any of those mines in that 25 miles, except by hiring some company like The Delaware and Hudson Canal Company, if it was willing to do so, to bring that coal to it?—A. It had not.

Q. And did it have, as matter of fact, any contract or traffic relations with any company to reach any of the coal in that 25 miles, except these relations you speak of with The Delaware and Hudson Canal Company?—A. I think not.

Q. Did the New York, Susquehanna and Western Railroad, this connecting link, or the Wilkes-Barre and Eastern, so far as you recall, have any kind of arrangements with the Delaware and Hudson for bringing coal to that company at the time, in 1898, when the Erie Railroad Company bought the majority of its stock?—A. I think not.

Q. Do you remember a point up in the Wyoming Valley there called Yeattsville?—A. Very well.

Q. Do you remember whether any of the coal from any of the mines of The New York, Susquehanna and Western Coal Company, or any of the mines reached by the New York, Susquehanna and Western connecting link came over any tracks of any railway to Yeattsville, aside from the Susquehanna, or its connections?—A. I think not.

Q. On this map the next railroad northerly from the Wilkes-Barre and Eastern appears to be the Delaware, Lackawanna and Western Railroad?—A. Yes, sir. That is correct.

Q. And the next one southerly appears to be the Lehigh Valley Railroad?—A. Yes.

Q. Do you know whether the New York, Susquehanna and Western Railroad or the Wilkes-Barre and Eastern, or this Susquehanna connecting link, reached any mines also reached by the Delaware, Lackawanna and Western Railroad?—A. I think so. But my recollection is vague on the subject.

Q. What mine have you in mind?—A. That is the point I can not recall at the present moment.

Q. One or more than one?—A. I think there was one mine reached by the Delaware, Lackawanna and Western Railroad. I am quite sure it is so, yet the name has escaped me.

Q. You thought there was one reached by the Delaware, Lackawanna and Western Railroad?—A. Yes; as well as by the Susquehanna and those connections, yet the name has escaped me at the present time.

Q. Was there any mine, so far as you can recall, reached by the Lehigh Valley Railroad that was also reached by the Susquehanna or the Wilkes-Barre and Eastern, or this connecting link?—A. I do not recall any. There might have been. It may have passed out of my mind. My recollection is a little vague.

Q. How is it; were you able to haul coal from one of these mines if the railroad did not reach the mine?—A. No. Practically, it could not be done.

Q. The railway had to come up to the breaker's mouth so that the coal could be unloaded from the breaker into the car? Is that correct?—A. Yes.

Q. And if that was not the situation, then the railroad could not carry the coal from that breaker to market?—A. That is practically the case.

Q. The only exception to that would be to hire another railroad which did reach that breaker, to get the car and bring it to you, as you did with the Delaware and Hudson?—A. That covers the ground, I think.

Q. I think you said this morning that there was one point locally that the Susquehanna and the Erie touched in common and served in common, and only one; is that correct, according to your recollection?—A. One point of any importance; that is substantially correct.

Q. What point is that?—A. Paterson, N. J.

Q. That is the point you had in mind?—A. That is the point I had in mind. There might have been one or two little villages where they were in common.

Q. Do you know enough about the traffic conditions of the New York, Susquehanna and Western and the Erie Railroad Company so that you can tell us whether they were active competitors for traffic in Paterson?—A. Yes.

Q. What do you say on that point?—A. The market was practically controlled by the Erie Railroad in Paterson. The sales by the Susquehanna at that point were comparatively insignificant, my recollection being that their coal trestle was rather on the outskirts

of the city of Paterson, whereas the Erie Railroad Company, of course, reached the center of the town.

Q. Paterson was a place about how large in 1898? Do you recall?—A. No. Probably forty or fifty thousand people.

Q. Aside from this coal business in Paterson, do you recall any other traffic in which they could be said to be competitors in any sense of the word?—A. They were competitors to a slight extent in the passenger business. Otherwise, I think the competition was insignificant, or nothing.

Q. At this point of time would you give us, approximately, or any other way, any idea of the gross or the net income per month, or per year, that The New York, Susquehanna and Western Railroad Company had from its Paterson business all told, or what proportion of it it got away from the Erie Railroad Company, if any, so that we could see whether this Paterson situation was one where competition was a negligible quantity, or whether it was really a factor?—A. No. Those figures are no longer in my memory. I knew them at one time.

Q. Perhaps you can tell us this: Have you any impression or recollection now as to whether you considered the New York, Susquehanna and Western Railroad a competitor of the Erie Railroad Company at Paterson in any sense, except a negligible one, up to the time the New York, Susquehanna and Western Railroad stock was acquired by the Erie Railroad Company?—A. I think that is correct. We considered the competition of the New York, Susquehanna and Western Railroad to be practically insignificant. Although, I can not substantiate that by figures.

Q. Was there any other railway reaching Paterson aside from the Erie Railroad and the New York, Susquehanna and Western Railroad?—A. No; I think not.

Q. Those two served that city?—A. Yes, sir.

Q. Do you recollect how close to Paterson the Delaware, Lackawanna and Western Railroad goes, whether it goes near enough to the city in any sense to make competition?—A. No; at least, not in my time, no competition existed.

Q. That competition also was regarded as negligible?—A. Yes, sir.

Q. I infer from what you said to Mr. McReynolds this morning in answer to his question that you know nothing about The Temple Iron Company transaction from beginning to end except by hearsay, in substance?—A. That is correct, I think.

Q. As to the purchase of the Pennsylvania Coal Company, you say that negotiation was conducted by Mr. Thomas?—A. Mr. Thomas and one or two others of the executive committee, according to my recollection.

Q. Previous to the purchase of the Pennsylvania Coal Company this fight had taken place before the board of railway commissioners to prevent their issuing a certificate of necessity to the railroad line that was to run from what point to what point, if you can tell us?—

A. From either Lackawaxen or Hawley, I think, to Kingston on the Hudson.

Q. It was a line wholly within the State of New York? I mean the new line.—A. I think not. I think part of it was in Pennsylvania, if I am not mistaken.

Q. It was a line that was to connect the Erie and Wyoming Valley Railroad, of which the Pennsylvania Coal Company owned the majority of the stock, with tide water on the Hudson at Rondout, near Kingston?—A. Yes.

Q. And that is about how many miles north of New York?—A. About 60 miles. The distance has escaped me at present. It is a long distance.

Q. Under the law of the State of New York as it then stood anybody interested could object to the board of railroad commissioners to their issuing a certificate of necessity to a new railroad company, could they not?—A. That is my recollection of the law as it was then.

Q. And then the new railroad company had thrown upon it the burden of showing that there was some public interest involved that made it advisable for the railroad commissioners to issue a certificate of necessity and permit the new railroad to be built?—A. That is correct.

Q. You say the Erie Railroad Company and the New York, Ontario and Western Railroad Company each objected to such a certificate being issued to this new railroad company by the State of New York, by the commissioners of that State?—A. They did.

Q. That was not an unusual proceeding in the State of New York, was it?—A. Very common.

Q. And had been for many years?—A. Very many years.

Q. Hardly a new railroad has been built in the State of New York in twenty years in which precisely that contest has not taken place?—A. I should say so, certainly.

Q. That contest was taken in the usual form, by lawyers, before the commissioners, for the respective railways who appeared as parties?—A. Yes. Testimony was taken. The proceedings were practically those of a suit, an action at law.

Q. A large amount of testimony was taken?—A. A great deal of testimony.

Q. You say the result was that the commissioners issued a certificate of necessity to this new railroad?—A. They did.

Q. Authorizing its construction?—A. They did.

Q. Some of them dissented, and the majority were in favor of the certificate?—A. I do not remember the dissenting, I am sorry to say. I had charge. It was the only large lawsuit in which I was defeated. I think they granted a unanimous assent.

Q. Did you conduct it personally?—A. No. I entrusted it to more competent hands.

Q. Who represented the Erie Railroad Company?—A. Mr. David Wilcox, Mr. Frank Platt, and one or two other lawyers.

Q. Did somebody else represent the New York, Ontario and Western Railroad?—A. I think the New York, Ontario and Western was represented by those attorneys, and also by Mr. Kerr, the counsel of the New York, Ontario and Western Railroad.

Q. And Mr. Garver, of Sherman and Sterling, represented the new road?—A. Yes.

Q. Do you know whether any steps were actually taken to build this new road under that decision?—A. I do not remember any.

Q. That new road was to have been built along the tow-path of the old Delaware and Hudson Canal Company canal?—A. That was their plan.

Q. And after they got down to Kingston, or Rondout, then they would have to tow their coal down the Hudson River, or have it drawn down the river on one of the railroads, one or the other?—A. Yes. Or sent north to Albany or other points.

Q. I suppose you did not know what arrangements, if any, they had made to send it either north or south?—A. No; I did not.

Q. Or whether they had made any?—A. I do not recall that fact.

Q. How long do you think it was from the time that the commissioners granted the certificate of necessity before the negotiations for the purchase of the Pennsylvania Coal Company resulted in the purchase of the Pennsylvania Coal Company?

Q. My present impression would be, say, six months, or nine months; but that is subject to correction. I do not remember distinctly.

Q. Assuming, as counsel did, that the Pennsylvania Coal Company could have sent its coal over the Erie and Wyoming Valley Railroad and this new railroad, after it was built, what effect, if any, would that have had on the Erie Railroad Company?—A. The result would have been that the Erie Railroad Company would have lost a large and valuable tonnage which it transported to tide water if the Pennsylvania Coal Company had shipped its coal in that direction.

Q. Do you know whether it would have lost any other coal tonnage aside from the Pennsylvania Coal Company's?—A. None that I recall.

Q. Do you now recall whether there was any contract between the Pennsylvania Coal Company and the Erie Railroad Company growing out of the building of the Erie and Wyoming Valley Railroad, and the connection between the Erie and Wyoming Valley Railroad and the Erie Railroad itself, with reference to the coal of the Pennsylvania Coal Company, that would have prevented the coal of the Pennsylvania Coal Company from going out over a different route?—A. Such a contract existed, and my impression of that contract was that it would, if enforced, have prevented the Pennsylvania Coal Company from shipping its coal over that line.

Q. That was a very old contract, or do you not remember?—A. My recollection is that the contract which was then in existence was not so old; that it was comparatively modern.

Q. The contracts had reached back far into the distance?—A. Yes, sir; a long time; a series of contracts.

Q. Had the Pennsylvania Coal Company ever had any outlet for its tide-water coal except the Erie Railroad Company?—A. Practically none.

Q. What steps Mr. Thomas and these other gentlemen took for ascertaining how much coal there was in the ground in the lands of the Pennsylvania Coal Company, or how much that property was worth, or anything of that kind, I assume you cannot state of your own knowledge?—A. I saw the reports, but I do not recall at this present moment what the results were.

Q. You know they did take some steps?—A. Yes. I was familiar with the examinations made and the reports made, but I can not recall them at the present moment.

Q. There were examinations made to find out the intrinsic value of the Pennsylvania Coal Company's property before it was purchased?—A. There were.

Q. Do you remember enough about those reports, which you saw, to tell us whether or not they indicated that the property was worth as much, or more or less, than the purchase price?—A. The impression made upon my mind was that the property was very much more valuable than the price paid for it, as a coal property, of course.

Q. As it stood?—A. As it stood.

Q. Do you recall who made those reports; whether they were made by some one in the employ of the Erie Railroad Company, or by outsiders?—A. My recollection is they were both. My recollection is we had reports from officers of the Erie Railroad Company, as well as from outside experts.

Q. That property, according to the record here, was acquired by the Erie Railroad Company some time in 1901. Have you any recollection on that point?—A. Thereabouts. I could not fix the date precisely.

Q. Did you remain with the Erie Railroad Company long enough, under normal conditions, to ascertain for yourself whether the purchase would prove profitable or otherwise?—A. That was my impression, I remember distinctly.

Q. That it would prove profitable?—A. That it was profitable, and would prove profitable.

Q. Do you recall any facts or figures now that gave you that impression, or have you just the impression without the facts and figures on which it rests?—A. It is merely the impression. The figures have passed from my mind. I have had no opportunity to examine reports or figures for many years, consequently my answers are necessarily vague in this examination.

Q. I notice in giving the railroads buying the stock of The Temple Iron Company you named the New York, Ontario and Western. That was, of course, just from memory?—A. Yes, sir. Now that you call my attention to that fact, I am inclined to think I was in error in including that.

Q. Perhaps you failed to name one or two that were in the transaction?—A. I did. I never charged my memory with that, of course. There were several others I know interested, which I have forgotten.

Q. I suppose you could not give us any more accurate information than that that we could get from the papers themselves on the subject?—A. Not more accurate, no.

Q. Did you have any information, outside of the papers themselves, aside from mere rumor?—A. None whatever.

Q. Do you recall now whether the Erie Railroad Company got more tonnage from the Hillside Coal and Iron Company, of which it owned the majority of the stock, or from the Pennsylvania Coal Company, of which it did not own the stock but only had these traffic relations, or contract relations, down to 1901?—A. My recollection is that it received more coal from the Pennsylvania Coal Company, decidedly more coal I should say.

Q. On the subject of this committee, of which you were a member, which met at Mr. Warren's office, you think, to consider rates to outside shippers, so far as you can recall, was any change in the rates to outside shippers made at any time from the beginning of 1901 until the time you left the employ of the Erie Railroad Company, in January, 1903?—A. I do not remember any.

Q. What is the best of your recollection as to whether that committee of which you were a member, and which you think met in Mr. Warren's office, ever made any report on the subject any way?—A. I think no report was ever made, but that is subject to correction. The records may show that such report was made. I have no recollection of any report at all. I have no recollection that any action was taken as the result of that meeting. But, still, that is merely a recollection of eight years.

Q. To your best recollection, no report was made?—A. To the best of my knowledge and belief, no report was made.

Q. Do you recall any discussion between the members of that committee at any time on the subject of the rates to outside shippers, or of any change in the rate to outside shippers?—A. No; my recollection is of a very vague character. I have been endeavoring to recollect what happened at that meeting ever since I saw it mentioned in the newspapers, but without result.

Q. The only result is you recall a personal incident that enables you to recall that there was a meeting in Mr. Warren's office?—A. That is practically all.

Q. During the time that you were connected with these Erie Railroad Company coal companies how were settlements made under the 60 per cent contracts, and afterwards under the 65 per cent contracts, according to the best of your recollection, generally?—A. Statements were prepared by the auditor, and vouchers made out, and checks sent.

Q. On the basis of prices where?—A. Prices at tide water, New York tide.

Q. Monthly?—A. Monthly. As provided in the contract, before the 20th of each month, I think, or something of that sort.

Redirect examination by Mr. McREYNOLDS:

Q. Did I understand you rightly to say that the Erie and Wyoming Valley Railroad Company belonged to the Pennsylvania Coal Company?—A. Fifty-one per cent of the stock, as I remember it.

Q. Is that still true?—A. According to my recollection on the subject, it is still true, but that is subject to correction. My recollection is that no change was made in the ownership after the Erie Railroad Company acquired the stock of the Pennsylvania Coal Company, but still that is subject to correction.

Q. To whom did the other 49 per cent belong?—A. To the Erie Railroad Company, to my recollection, or one of its subsidiary companies. I think to the Erie Railroad Company.

Q. So that for a number of years prior to the time the Pennsylvania Coal Company was acquired by the Erie Railroad Company 51 per cent of the Erie and Wyoming Valley Railroad Company stock belonged to the Pennsylvania Coal Company and the other 49 per cent to the Erie Railroad Company?—A. Or one of its subsidiary companies. That is correct, I think.

Q. And that condition, so far as you are advised, remains until now?—A. I know nothing to the contrary.

Q. From what points does the Erie and Wyoming Valley Railroad Company extend?—A. Beginning at Hawley and moving northwestwardly, it extended to a number of operations of the mines owned by the Pennsylvania Coal Company, including the villages or towns, Pittston, I think, and one or two other places.

Q. Its eastern terminus was Hawley?—A. Yes; and the western termini were the mines, practically.

Q. And those mines were in the neighborhood of Pittston and Wilkes-Barre, were they not?—A. Pittston. Not Wilkes-Barre, I should say. North of Wilkes-Barre,I should say. Pittston and the neighborhood mostly northerly, I should say. I haven't those localities; they have passed out of my mind.

Q. With what other roads except the Erie lines did the Erie and Wyoming Valley Railroad connect?—A. I have forgotten the other connections.

Q. It crossed the Delaware, Lackawanna and Western, did it not?—A. Yes, sir; I think so. I think overhead crossing. I do not think that it had a switch crossing or connection. I do not remember.

Q. It crossed the Delaware, Lackawanna and Western, did it not?—A. I think so.

Q. Whether this Erie and Wyoming Valley Railroad crosses the Delaware, Lackawanna and Western at grade or above grade you are not prepared to state?—A. No; my recollection is that it is an overhead crossing, but it is sometime ago, and I can not recollect.

Q. What other railroads does this Erie and Wyoming Valley Railroad Company connect with?—A. I do not recall. I have known, but it has passed out of my mind.

Q. Does it go into the town of Pittston?—A. Yes.

Q. What other railroads go into Pittston?—A. The Delaware and Hudson, I think. I am not sure that there is any other railroad.

Q. So that the coals that were mined by the Pennsylvania Coal Company might have been delivered by means of the Erie and Wyoming Valley Railroad Company to The Delaware and Hudson Company, might they not?—A. I do not remember that there was a connection. I do not recall that a connection was ever made.

Q. Both of those roads went into Pittston, did they not?—A. According to my recollection.

Q. Those coals might have been delivered by arranging a connection to the Delaware, Lackawanna and Western, might they not?—A. Probably at some point. I do not recall the localities sufficient to know whether that was possible or not.

Q. The plan, as I understand you, was that the Delaware Valley and Kingston Railroad Company was to connect with this Erie and Wyoming Valley Railroad Company at Hawley?—A. Yes; at Hawley, or at Lackawaxen. My memory is a little uncertain on that point.

Q. How long after the proper authorities in New York granted the permission for the construction of this Delaware Valley and Kingston Railroad before negotiations were opened up in behalf of the Erie Railroad Company for the purchase of the Pennsylvania Coal Company?—A. I do not remember.

Q. Who actually carried on those negotiations?—A. As I said, Mr. E. B. Thomas, and one or two other members of the executive committee of the Erie Railroad Company.

Q. Ultimately, was not the Pennsylvania Coal Company purchased through J. P. Morgan & Co.?—A. They were the fiscal agents of the Erie Railroad Company. I am speaking from recollection. I think the negotiations were conducted by Mr. Thomas, the then president of the Erie Railroad Company, and one or two others of the executive committee of the Erie Railroad Company.

Q. And Morgan & Co. were the fiscal agents through which the negotiation was finally consummated?—A. It was finally consummated through Morgan & Co.

Q. Do you know what sort of commission was paid to J. P. Morgan & Co. for that deal?—A. I have forgotten.

Q. Have you no general impression?—A. I have a general impression that it was a considerable sum, but I have forgotten.

Q. About five millions of dollars, was it not?—A. I could not venture to say at this late date.

Q. Let us consider the railroad service which exists between Carbondale on the north and Wilkes-Barre on the south. I understood you to say that the New York, Susquehanna and Western acquired control of the Wilkes-Barre and Eastern?—A. Yes, sir; they built it. The New York, Susquehanna and Western owned the stock and practically built the Wilkes-Barre and Eastern, according to my recollection.

Q. So that the Wilkes-Barre and Eastern was really a child of the New York, Susquehanna and Western?—A. Precisely, according to my recollection.

Q. And the terminus of the Wilkes-Barre and Eastern was Wilkes-Barre?—A. Yes; one of the termini.

Q. There are from Carbondale direct tracks of the Erie Railroad Company to tide water at New York?—A. Yes, sir.

Q. Coming now to the territory that lies in between Wilkes-Barre and Carbondale, what railroads lie in there and connect those two points?—A. The Delaware and Hudson is the principal one.

Q. The Delaware and Hudson reaches both Carbondale and Wilkes-Barre?—A. Yes, sir.

Q. So that all the coal mines to which the tracks of the Delaware and Hudson reach between these two points could have shipped out their coals either over the New York, Susquehanna and Western, or over the Erie, through their connection over the initial lines of the Delaware and Hudson?—A. I think that would be correct. I do not recollect that there were any mines so situated. I do not remember that there were any independent mines situated on the Delaware and Hudson between Carbondale and Wilkes-Barre.

Q. The mines on the Delaware and Hudson were situated there, were they not?—A. Surely.

Q. So any mine that laid in between Wilkes-Barre on the south and Carbondale on the north, which was reached by the tracks of the Delaware and Hudson Railroad, could have shipped its coal to New York over either the tracks of the Erie, or over the tracks of the New York, Susquehanna and Western?—A. I think that is correct.

Q. And that was true in 1898?—A. Yes; I think so.

Q. Were there collieries of the Pennsylvania Coal Company reached by the tracks of the Delaware and Hudson Railroad?—A. I think not, according to my recollection.

Q. Was there any railroad company in 1898 controlled either by the Erie Railroad Company or by The New York, Susquehanna and Western Railroad Company, or the Wilkes-Barre and Eastern Railroad Company, which connected the Erie Railroad Company's tracks and the tracks of the New York, Susquehanna and Western?—A. I do not remember any.

Q. The Susquehanna Connecting Railroad Company, where was its tracks located, and what roads did they connect, if any?—A. I can not describe that accurately. If my memory serves me correctly, that was the gathering railroad built by the New York, Susquehanna and Western, or by the Wilkes-Barre and Eastern, and practically the same ownership, for the purpose of reaching several collieries from which they derived traffic. I have forgotten precisely what collieries it reached.

Q. How are the tracks controlled by the Erie Railroad Company at this time connected with the tracks of the New York, Susquehanna and Western?—A. I can not give you that any longer from memory.

Q. There is a connection now?—A. Yes, sir; there are various connections.

Q. How long have those connections existed?—A. I can not go into details of that. I know there are connections, but I do not remember. It is easy enough to prove that matter.

Q. Do you know when the Erie Railroad Company acquired the 49 per cent of the capital stock of the Erie and Wyoming Valley Railroad Company?—A. That was a great many years ago, and it was a good many years before I was first connected with the Erie Railroad Company. I have forgotten the date. The road was built originally by the Erie Railroad Company. My recollection is that the road was built by the Erie Railroad Company, or by the Erie Railroad Company and the Pennsylvania Coal Company together, and at that time the Erie Railroad Company owned 51 per cent, and then later on the Pennsylvania Coal Company bought a few shares of the stock from the Erie Railroad Company to give them control. Those things happened many, many years ago; long before I was connected with the Erie Railroad Company.

Q. You were questioned about the reason for the Hillside Coal Company making a contract for the purchase of the coals of the Delaware and Hudson Company. As I understood you, you said it was done in order to insure that traffic to the Erie line. Am I right?—A. I do not think I stated it in that way. I intended to say because I thought it was a profitable transaction for the Erie Railroad Company.

Q. How was it profitable to the Erie Railroad Company?—A. It was done very largely on my recommendation, as I remember, and at that time it seemed to me it would be profitable for the Erie Railroad Company to purchase that coal and transport it.

Q. Why?—A. I thought there was a profit in the transportation of the coal.

Q. So that the arrangement between The Delaware and Hudson Company and the Hillside Coal Company was made in order to give a profit to the Erie Railroad Company through the transportation?—A. That was my object in recommending it.

Q. Do you know what the result upon the books of the Hillside Coal Company was?—A. I do not.

Q. You do not know whether it showed a profit or showed a loss?—A. No; the contract was in operation only a comparatively short time before I left the Erie Railroad Company, and I have heard nothing about it since.

Q. Did you consider what the direct result to the Hillside Coal Company would be on the books when you made the contract?—A. I did.

Q. What did you determine it would be to the Hillside Coal Company?—A. My recollection is that it would not involve a loss to the Hillside Coal Company. I have forgotten now the details and the figures I made, but my general impression is that was my view at the time when I recommended the contract.

Q. You treated the Hillside Coal Company and the Erie Railroad Company as one and the same thing in substance?—A. Yes, sir; excepting for bookkeeping purposes.

Q. Was that the way the two companies were treated while you were with them, that their business was the same, excepting for bookkeeping purposes?—A. So far as I was concerned, I always treated them from that standpoint.

Q. You were asked something about the competition between the Erie Railroad Company and The New York, Susquehanna and Western Railroad Company upon the sale of coal at Paterson, N. J., and you said both lines reached that point, and both lines carried coal there for consumption?—A. I think so.

Q. You were then asked something about competition between these roads on traffic?—A. General traffic, as I understood the question. Judge Moot asked me whether there was any serious competition between the Erie Railroad, or its lines, and the New York, Susquehanna and Western Railroad in regard to traffic of any character, as I interpreted the question, and my answer was that, according to my recollection, there was no competition of any significance except in regard to the passenger business, at Paterson.

Q. Were not the Erie Railroad Company, through its coal company, and The New York, Susquehanna and Western Railroad Company, through its coal company, both bringing coals to New York Harbor and selling them here from the anthracite region?—A. Yes, sir; they were.

Q. Were not those coals in competition in New York Harbor?—A. Those coals were necessarily in competition in New York Harbor.

Q. A large part of the traffic of the Erie Railroad Company consisted of anthracite coal brought to New York Harbor, did it not?—A. It was an important part of it; yes, sir.

Q. An important part of the traffic brought over the lines of the New York, Susquehanna and Western was anthracite coal for sale in New York Harbor, was it not?—A. A very important part.

The WITNESS. Was there competition outside of the coal business? Was that the question? Outside of the coal business did the competition amount to anything? I understood Judge Moot's question referred to traffic outside of coal traffic.

Judge MOOT. That was right.

The WITNESS. It was

By Mr. MCREYNOLDS:

Q. So your answer to Judge Moot's question, that there was no competition except perhaps a little in Paterson in the passenger business, excluded the coal traffic?—A. Coal traffic being left out of consideration at that time.

Q. You did not mean, therefore, to say that there was no competition between these two railroads in the carrying of anthracite coals from the coal regions to the harbor of New York?—A. That answer referred entirely to business other than coal business. Judge Moot said, aside from the coal business.

Q. You said a while ago, in answer to a question, that there was some sort of an arrangement between the Pennsylvania Coal Company and the Erie Railroad Company, prior to the purchase of the former by the latter, relating to the shipments of coal to tide over the lines of the Erie Railroad. Can you give us what that contract was, in a general way?—A. No; I have forgotten the details of that contract. It is a matter of record I have no doubt. At least I know that one of the contracts was in writing, and I think that covered the ground. I should have to refer to the record. I can not recall the detail.

Q. Did it provide for any special rate to the Pennsylvania Coal Company in the shipment of its coal?—A. I really can not tell you. There was an arrangement by which coal was transported, and I think it provided for the division of rates, or something of that sort, and under the terms of the contract I think the Pennsylvania Coal Company agreed to give all of its tonnage to the Erie Railroad Company, but my recollection is so uncertain I should have to refer to the contract.

Q. While you were connected with the Erie Railroad Company and the Hillside Coal and Iron Company what was the result of the financial operations of the Hillside Coal and Iron Company?—A. I think, on the whole, the Hillside was profitable.

Q. Did you have occasion to make a computation to show what was the result of its purchase of coal on this 65 per cent basis?—A. I do not think I ever worked that out; no.

Q. Do you know what it was?—A. I do not. I do not recall at the present moment, at least.

Q. Do you know whether it was at a profit or at a loss?—A. I do not recall at present.

Q. Does the Erie Railroad Company bring to New York Harbor bituminous coal, or did it, while you were connected with it?—A. Practically nothing, I think.

Q. The shipment of bituminous coal over the Erie Railroad Company to New York Harbor was practically nothing, you said?—A. That is my impression, that it was insignificant, if we brought any at all. I do not recall that the Erie brought any at any time.

Q. Do you know whether the Erie Railroad owns or controls the Moosic Mountain and Carbondale Railroad?—A. I have forgotten the relations which existed between the Moosic Mountain and Carbondale Railroad. If I remember rightly, that was about a mile long, and it was in process of abandonment, if I am not mistaken, when I was there. It was a very dangerous piece of track, if I remember rightly.

Q. It was chartered?—A. Yes; there was a charter. I have forgotten what happened to it.

Recross-examination by Judge MOOT:

Q. Did the New York, Susquehanna and Western or the Wilkes-Barre and Eastern or the connecting link of the Susquehanna reach any mines, or within 10 miles of any mines, reached by the Erie, or the Jefferson branch of the Erie, or the Erie and Wyoming, which

were the Pennsylvania Coal Company roads, so far as you know?—A. I do not recall that they reached any mines together.

Q. According to the best of your recollection, they were miles apart as to meeting at any mines, were they not?—A. That is my present impression; yes.

Q. All this Pennsylvania region is in Pennsylvania?—A. Yes; the anthracite coal field.

Q. And this little Moosic Mountain and Carbondale Railroad Company and these other little roads, this Erie and Wyoming Valley, for instance, and so on, are Pennsylvania railroads?—A. Yes, sir.

Q. Not subject to the Interstate Commerce Commission, those roads alone?—A. They are local roads in the State of Pennsylvania.

Q. Unless they engage in interstate traffic, they are not subject to the Interstate Commerce Commission?—A. Exactly.

Q. Or the federal law?—A. That is correct.

Q. Do you know of any way of making these various railroad companies haul coal to the Erie Railroad except on conditions that the Erie Railroad Company would pay them their reasonable charges for hauling it?—A. I do not.

Q. Those reasonable charges would contain a reasonable profit to them for doing it?—A. Presumably.

Q. Do you know whether the Erie Railroad Company had to pay, or did pay, The Delaware and Hudson Railroad Company any larger compensation for hauling coal to the Erie Railroad than other railways paid to railroad companies for hauling coal for them, if they got them to haul it, or do you not know about that?—A. I do not think such was the case. I do not think any difference would exist. If any difference should exist, it would exist rather in favor of the Erie than against it.

Q. They would rather get a little better concession in favor of the Delaware and Hudson instead of not getting so good?—A. Yes.

Q. In the New York market in selling its coal, do you know whether the Hillside Coal and Iron Company at any time ran against the coal of the coal company of the New York, Susquehanna and Western, and found it an active competitor, with the same customers in the same market?—A. I do not recall any direct conflict. Of course, both coals were offered in the New York market.

Q. All coal brought to tide water by all the railroad companies comes in competition more or less in that market?—A. Naturally.

Q. In that sense, the New York, Susquehanna and Western was a competitor of the Erie Railroad Company, just as the Reading, or the Lehigh, or any other road was a competitor of the Erie Railroad Company?—A. Precisely.

Q. Was The New York, Susquehanna and Western Railroad Company a competitor of the Erie Railroad Company in the coal business in any different sense from which these other railways were, while you had charge of the Erie coal properties, so far as you remember?—A. It was not, so far as I remember.

Q. Was it cutting the rates to get the coal down to tide, or cutting the prices to sell the coal when it got the coal to tide, so far as you can recollect?—A. I do not recall any such case.

Q. Were these Erie Railroad connections that you spoke of with the New York, Susquehanna and Western Railroad direct or indirect connections that were put in after the Erie Railroad got the stock of the New York, Susquehanna and Western? You spoke of some connections, and you said you could not remember what they were, or where they were, but you thought there were connections?—A. I have an impression that there was one connection put in somewhere. I do not recall, however, the matter with sufficient distinctness to testify on the subject.

Q. You can not say for sure whether there was such connection?—A. No. I think there were, but the matter is very vague in my mind. I think there was a connection perhaps put in at Paterson, but this is all guesswork. I have no distinct recollection on the subject.

Q. Then it was not in the coal region, but it was down near Paterson, as near as you can recollect?—A. That was what I had in mind, but I do not recall. That may not have been put in. I do not recollect.

Q. So far as you recall, during the time you were connected with the Erie Railroad Company was there any connection made in any way, or could there be any connection made between the Erie Railroad Company and the New York, Susquehanna and Western Railroad in the coal region?—A. I do not think so.

Q. The only connection between those two roads in the coal region while you were there would be over the tracks of some other road, by consent of that road?—A. That is my recollection.

Q. On compensation to it?—A. Yes.

Q. This Erie and Wyoming Valley, did that reach any mines except the mines of the Pennsylvania Coal Company, so far as you remember?—A. I think not.

Q. Then, so far as the Erie Railroad Company was concerned, it would never be able to get coal out of this region by the Erie and Wyoming Valley Railroad except from the mines of the Pennsylvania Coal Company?—A. That would be a proper conclusion, if my first statement is correct.

Q. That is the best of your recollection?—A. Yes.

Q. So far as the Erie Railroad Company is concerned, it would not be able to get coal by the Jefferson branch except from the mines of the Hillside Coal and Iron Company, which I understood you to say were on that branch?—A. That is correct.

Q. So far as the Erie Railroad Company was concerned, what other coal it got from that region it would have to get over some traffic or trackage arrangement, such as was made with the Delaware and Hudson to get its coal?—A. I think that is correct.

Q. And if it made and did make such an arrangement with some railway on terms that would enable it to make some profit from

the freight it got for the transportation, then it could get coal from that region and not otherwise?—A. That is correct, I think.

Q. While you were connected with this coal business, so far as you recall, at the prevailing rates, was there a sufficient profit, according to your information, to enable the Erie Railroad Company to pay the lateral charges, or prorate, or whatever you choose to call it, of other railroads, and get coal from them so that it might have increased its tonnage more than it did?—A. I think not.

Q. You went the limit in that respect in this contract and in those arrangements you made with the Delaware and Hudson to get tonnage from them?—A. I think so.

Q. You went so far as you thought you could go?—A. I was very much criticised for doing it.

Q. On the ground that there was not sufficient profit to the Erie Railroad Company?—A. Yes.

Q. By other officers of the Erie Railroad Company?—A. So I understood.

Q. That was the onerous question discussed at the time the contract was made between the various officers of the Erie Railroad Company and the directors?—A. Yes.

Q. As to whether there would be a sufficient profit to the Erie Railroad Company in that contract, in any view, to justify it in making that contract to get additional tonnage, when it already had everything with which to move it?—A. That is precisely correct.

Q. On your investigation and judgment and recommendation they made the contract to test the thing by experiment?—A. That is correct.

Q. This Susquehanna connecting link that has been mentioned here was a line some 3 miles or more long?—A. Just about that. Very short. Practically side tracks running into the mines.

Q. Did it cross the Susquehanna River, or any stream or any ravine?—A. My recollection is there were some high trestles on it. My recollection is vague. I have not seen it for some years.

Q. There was a high trestle there, though?—A. Yes. I remember that very distinctly.

Q. A pretty expensive piece of road to build?—A. Extremely so, as I remember.

Q. Did that connecting link reach the Jermyn mines?—A. I am a little in doubt about that.

Q. Do you remember any other mines that it reached, unless it reached the Jermyn mines?—A. I think it reached the Jermyn mines, but still I ought not to testify on that subject; my recollection is too uncertain.

Q. Did that connecting link reach any mines reached by the Erie Railroad, or any of its branches?—A. It did not.

Q. To bring the coal from Carbondale down to Wilkes-Barre and take it over the New York, Susquehanna and Western, bringing it down by the Delaware and Hudson, by a trackage arrangement,

would have involved a movement of about 36 miles from Carbondale to Wilkes-Barre?—A. Thereabouts; yes, sir.

Q. What would the character of that have been—an easy and cheap one, comparatively, or a difficult and expensive one?—A. For the Delaware and Hudson?

Q. Yes.—A. An easy movement.

Q. Many tracks to cross, or anything of that kind?—A. No. Level, as I remember; a very easy movement.

Q. Assuming that you could have got it to the New York, Susquehanna and Western, what would the haul have been, would it have been as short as the Erie Railroad haul, or longer, as easy or harder?—A. I can not answer that question immediately.

Q. Assuming that we got that coal from Carbondale down to Wilkes-Barre by the Delaware and Hudson, could we have got it then to the New York, Susquehanna and Western? Would it have been where it could have been turned over to them?—A. So far as I remember there was no connecting track.

Q. The New York, Susquehanna and Western, or the Wilkes-Barre and Eastern, was about a mile away from the Delaware and Hudson, was it not?—A. A very considerable distance away; yes.

Q. Were they on the same side of the river, or on opposite sides of the river?—A. The Wilkes-Barre and Eastern crosses the river at that point, or did when I was there last, so that its terminal is on the opposite side from the Delaware and Hudson, as I remember it. In fact, I do not know whether it would be practicable to make a connection there. No connection exists, as far as I know.

Q. It would be difficult, if not impracticable?—A. That would be my present impression.

Q. That mile or more that would have to be built to make a connection would have been an expensive piece of building, anyhow, would it not?—A. Unquestionably.

Q. If it had been possible?—A. I think that is correct.

Q. The Erie and Wyoming Valley crosses the Delaware, Lackawanna and Western, to your recollection, at grade, or above, or below?—A. My recollection is at a considerable distance above grade.

Q. Overhead?—A. Overhead, I think.

Q. To make a connection between the Delaware, Lackawanna and Western and the Erie and Wyoming Valley Railroad, it would have been necessary to have done some building of some sort?—A. Yes. I do not remember whether it was practicable.

Q. That crossing is near Nay Aug?—A. I think that is the case.

Q. About 8 miles from this coal region, so-called, or valley?—A. It is some little distance; yes.

Q. In that neighborhood?—A. In that neighborhood; I should think.

Q. As those roads existed there on the ground there was no connection between them, and whether one would have been practicable from an operative standpoint it would have taken an engineer to determine?—A. I think that is right.

Q. Whether a connection could have been made by which either could have served the other economically as the result of that connection would take more knowledge to determine than you, I presume, possess?—A. Certainly.

Q. Noboby had ever determined it up to that point that such a connection was practicable or economical or advisable?—A. Not to my knowledge.

Q. The Lehigh Valley Railroad, I understood you, came into Pittston?—A. The Delaware and Hudson comes into Pittston. I did not mention any other.

Q. How far away from the Delaware and Hudson Railroad where it enters into Pittston is the Wilkes-Barre and Eastern, or any of these Susquehanna lines; a mile, or such a matter?—A. That would be my impression.

Q. Separated from each other by the river?—A. I have forgotten whether the river lies between them or not.

Q. Do you know whether it would have been practicable to have built a connection between those lines, or what it would have cost to build it, or whether it could have been economically operated after being built?—A. No; I never considered that question.

Q. It never had been done?—A. Not to my knowledge.

Q. So that there was no connection between the Delaware and Hudson or the Delaware, Lackawanna and Western, or the Lehigh Valley Railroad and the Susquehanna line, so far as you can recollect?—A. I do not recall any.

Q. The fact is that before a man puts down a shaft and develops a mine he has to arrange with some railroad company for a connection with the breaker of that mine? Is not that true?—A. That is the practice.

Q. He has to arrange either to have the railroad company build it, or to himself build a connection from the breaker of that mine to the line of some railroad?—A. Yes. That is indispensable.

Q. And when that mine is worked out that railroad is of no value?—A. Yes. Except as scrap.

Q. It is up there in a region where it is expensive to build railroads?—A. Yes.

Q. And expensive to operate them?—A. Yes; in general.

Q. Did you learn enough about this coal business to know whether or not, if the railroad builds that connecting link, it does so in return for some kind of an arrangement with the miner to furnish the railroad either part or all of the tonnage he produces?—A. That was the practice.

Q. So that these various mines and railroads were tied up by each other by contracts?—A. Yes, sir.

Q. And these various mines generally are served only by one line of railroad, with now and then exceptions?—A. That is the situation.

Q. And because a railroad runs to that region it by no means follows it can get coal?—A. By no means.

By Mr. McREYNOLDS:

Q. Do the tracks of The Delaware and Hudson Railroad Company lead from the anthracite region to tide water at New York Harbor?—A. No; they do not. They go to Albany.

Q. Is Albany the nearest point to New York which they reach?—A. I think so.

Q. So its tracks lead out to the northeast and northwest, do they, from the coal region?—A. Yes, sir; northeast—that is, the Delaware and Hudson.

Q. So there would be no way of bringing coal from the coal regions to New York Harbor exclusively over the lines of the Delaware and Hudson Railroad?—A. Not by rail; no.

(Adjourned until Thursday, December 3, 1908, at 10.30 a. m.)

Met pursuant to adjournment at New York, Thursday, December 3, 1908.

Present: The Examiner, and Messrs. McReynolds, Todd, Campbell, Warren, Moot, Schaperkotter, and Opdyke.

HENRY S. FLEMING, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. McREYNOLDS:

Q. Give us your residence and occupation.—A. New York City; consulting industrial engineer.

Q. Explain a little more fully what you mean by consulting industrial engineer.—A. I had the degrees of analytical chemist and metallurgical engineer in college; practiced analytical chemistry and blast-furnace operations; and I have had charge of mines and, going beyond that, I have had charge of electric-light properties, various works of various kinds. My principal work is in taking hold of properties and putting them in shape, properties that seemed to be run down, not going just right.

Q. How long have you been an engineer of the character you describe?—A. That work I have developed in about the last ten years. My early work was all in mining engineering, metallurgical work.

Q. When were you connected with the Anthracite Coal Operators' Association?—A. In 1895. My recollection is it was 1895; I do not remember the exact year. I think that was it.

Q. Running for how long?—A. I think for about six years.

Q. From 1895 then until 1901?—A. About 1901; yes.

Q. Prior to 1895 with what concerns, if any, were you connected?—A. Prior to 1895 with the Engineering and Mining Journal, their associate editor at that time. I had my engineering office also. I was with the Manufacturers' Record in Baltimore as associate editor. I had an engineering office in Baltimore. Prior to that, the general

superintendent of the Cameron Iron and Coal Company in Pennsylvania, the Northwestern Iron Company in Mayville, Wis.

Q. Is the Cameron Iron Company an anthracite company?—A. No; that was an iron furnace. They had a blast furnace there.

Q. Had you at any time any connection with any of the defendant railroad companies?—A. None whatever.

Q. Did you ever, at any time, get up information showing the amount of anthracite coal controlled or owned by what are known as the anthracite coal-carrying railroads?—A. I probably did something of that kind in connection with the statistical work in the Anthracite Association, but any work of that kind was done from the figures already prepared. I did not originate anything of the kind.

Q. Do you remember whether you got up such a statement, and if so, could you tell us where it could be found?—A. I really have no recollection at all. If anything of that kind was made up, it would have appeared in the association letters that you have there.

Q. What was your connection with the Anthracite Coal Operators' Association?—A. I began as assistant secretary and treasurer, and was later made the secretary and treasurer.

Q. What was the Anthracite Coal Operators' Association? Define its general purposes.—A. It was an association of the individual operators, as we called them; that is the operators who were mining and whose product was either sold through their own sales agent in the market or sold to some of the companies which were subsidiary to the railroad companies.

Q. Who were the members of the association?—A. I really do not remember their names.

Q. About how many members were there?—A. It would be simply a guess to say.

Q. You have some recollection of the matter, have you not?—A. I should say somewhere about 50 to 60.

Q. They were men who were mining anthracite coal in the anthracite coal regions of Pennsylvania and selling it?—A. Yes.

Q. They were not men who were in any way connected with the anthracite coal carrying roads?—A. Not so far as I know.

Q. Was not one of the primary purposes of the association to look after the interests of miners who were not associated with the railroad companies?—A. Yes. It was a group of the people who were operating on their own account. The idea was to get them together, to try to do anything at all that was in their interest.

Q. They were called independent operators as contradistinguished from the railroad companies?—A. Precisely.

Q. What was the fundamental purpose of this association, as you understood it?—A. You have already expressed the fundamental purpose.

Q. Did this association have regular meetings?—A. Regular meetings were specified in the by-laws, but they were not held regularly.

Q. The president was who?—A. My recollection is, the Hon. William Connell.

Q. During the whole time you were connected with it?—A. During the entire time I was connected with it; yes.

Q. When was this association organized?—A. I really do not know. It was organized before I went into it.

Q. Is it still in existence?—A. No; I do not think so. I dropped out of it. I understood the association was entirely disbanded in, I think, 1901.

Q. When did you leave it; 1900?—A. My recollection is it was in the latter part of 1900 or 1901. I think it was in 1901. I am not sure.

Q. Why was it abandoned?—A. The operators saw no further reason for keeping it up. The majority of them made contracts for the sale of their coal and there was no occasion for it.

Q. The majority of them had made contracts for the sale of the coal during the life of their collieries?—A. So I understood.

Q. And, as there seemed to be no reason for the further continuance of the association, it disbanded?—A. Yes.

Q. Was the price at which contracts were made the same as the price which they were getting for coal when you went with the association?—A. That I do not know personally. That was a matter that was taken up by the members of the association, the members of the committee, the people who had that in charge, and I was never brought in touch with that at all.

Q. The association was disbanded shortly after what were known as the 65 per cent contracts were generally entered into, was it not?—A. I do not remember what time they were entered into. I presume it was at that time, though. I know the contracts were closed.

Q. Did you publish, during your connection with this association, a sort of a monthly pamphlet or other official document?—A. The one that you have before you.

Q. What is the name of it?—A. The Association Letter we called it.

Q. Were you the editor?—A. Yes.

Q. The articles in that letter, generally speaking, were the product of your pen?—A. Yes; I think in most cases.

Q. Did it become necessary, as a part of your duties while acting as an officer of this Independent Operators' Association, to inform yourself generally about the history and condition of the anthracite coal trade and the relationship of the operators to the railroads?—A. In a general way, yes; in so far as I could. I was never fully satisfied with the amount of information I had on that.

Q. Will you tell us when the practice began on the part of the independent operators of selling their coal to the railroads and receiving a percentage of the price realized at tide water?—A. I have no idea. That was before I went in there.

Q. When you first became connected with the Independent Coal Operators' Association, were many of the members selling the product of their collieries to coal companies connected with the railroads?—A. I should say about half were, or more.

Q. Do you know what they were receiving?—A. I really do not. My recollection is that it was what was then called a 60 per cent contract.

Q. Had you any knowledge of the anthracite coal business prior to the time you went with this association in 1895?—A. None whatever, excepting, when I say none whatever, except in my general newspaper work, I knew of the industry; but the details of the industry I knew nothing at all about.

Q. When you first went with this association in 1895, do you know anything about the practice, if such practice existed, of the railroad companies charging independent operators their published rates and then making a settlement at the end of the month, or at some other stated time, on the basis of 40 per cent of the price at tide water?

Judge MOOT. I object to this question as incompetent, because it is not within the allegations of the petition; because it does not specify any defendant, but groups them all; because it assumes a practice not proven, and because it necessarily rests, as it shows, on the thought that the witness can testify on the subject from mere hearsay or rumor.

Judge CAMPBELL. I object because the subject-matter inquired of is in no wise under consideration in this case; if the practice existed, it was not in violation of any law which is the subject of inquiry in this case; and especially because if the practice existed, it was after 1901 only an offense against the act to regulate commerce; in addition, if such a practice prevailed, it should be proven by the best evidence; that is to say, competent witnesses having personal knowledge of such dealings and transactions.

A. I have no personal knowledge of anything of that kind.

Q. What is your information on the subject?

(Judge Moot made the same objection to this question, and objected on the further ground that it now appears by the witness's answer that his answer must be rested on hearsay or rumor, and therefore upon an incompetent basis.

Judge Campbell repeated his objection.)

A. In my first year or more with the association, matters of this kind did not come before me at all. Later I have heard things of that kind from various of the operators; I do not remember who.

Judge CAMPBELL. I give notice here of a motion to strike out any testimony of this witness bearing upon the subject which he has derived from conversations with various operators or conversations with other people.

By Mr. MCREYNOLDS:

Q. That matter was a subject of frequent discussion in your association?—A. No, it was not. Things of that kind I heard occasionally as I went around among the operators.

By Judge CAMPBELL:

Q. Private conversations with individual members?—A. Simply speaking to the members about their general affairs, that might have been mentioned, as my recollection goes.

By Mr. MCREYNOLDS:

Q. Was not this whole subject of rates one of the fundamental subjects that was constantly discussed in the association?—A. The thing that was constantly discussed was the desire to get more money and a better price for the coal.

Q. That involved the question of rates, did it not, necessarily?—A. The operators did not talk so much about the question of rates as they did about how much they were going to receive.

Q. Have you written articles for the Financial Chronicle on the subject of anthracite coal?—A. None that I ever recollect.

Q. Do you know who does write the articles which appear in the Financial Chronicle on subjects relating to the anthracite coal industry?—A. I have no idea.

Q. Are you in any way connected with the coal trade at present?—A. With the bituminous coal trade.

Q. What is your connection with the bituminous coal trade?—A. Secretary of the Bituminous Coal Trade Association.

Q. Who make up the membership of that Bituminous Coal Trade Association?—A. The majority of the bituminous coal operators who ship coal to tide water. It is purely with reference to the tide-water market.

Q. Give us some of the leading members of that association, and from what regions?

Objected to as immaterial.

A. In the Fairmont region of West Virginia, The Fairmont Coal Company; I can not remember all of them.

Q. Just give the leading ones.—A. The principal operator, the Fairmont Coal Company. In the Myersdale region, Somerset County, Pa.—called both Somerset and Myersdale; Somerset is really the region—there is the Somerset Coal Company. That is the principal shipper. There are several others in there; I do not remember the names of them now. The Georges Creek region in Maryland; the Consolidation coal Company; Black, Sheridan & Wilson; those are the principal ones. In the Clearfield region of Pennsylvania, the Berwind-White Coal Mining Company; the Pennsylvania, Beech Creek and Eastern Coal Company; the Morrisdale Coal Company; those are probably the largest. In the New River region in West Virginia, the Chesapeake and Ohio Coal Agency Company—they are agents for a large number of smaller mines. The Chesapeake and Ohio Coal and Coke Company; the White Oak Coal Company. Those are probably the largest.

By Judge CAMPBELL:

Q. How about Pocahontas?—A. In the Pocahontas region in West Virginia and Virginia, Castner, Curran & Bullitt, who are agents for

a very large number of operators in that region; William C. Atwater & Company, who were operators, and also agents for a number of mines.

By Mr. McREYNOLDS:

Q. Do you know approximately how much bituminous coal is brought for sale to New York Harbor?—A. I really do not.

Q. Give us an idea, if you can.—A. I should say to New York Harbor, all told, about 6,000,000 tons. That is simply an estimate. I have not the exact figures.

Q. What are the principal regions from which that bituminous coal is brought to New York Harbor?—A. The Clearfield region of Pennsylvania.

Q. The Clearfield region, which is in Clearfield and adjacent counties?—A. Clearfield and other counties.

By Judge CAMPBELL:

Q. Mainly Cambria and Clearfield?—A. Yes; Cambria and Clearfield very largely.

Q. What other regions?—A. Also the Beech Creek region of Pennsylvania. That is in the northern part of Clearfield County and Center County, I think; and Jefferson County, I think, gets in there. The Myersdale region; that is in Somerset County, Pa. Also in small amounts from the Georges Creek region in Maryland and the Fairmont region in West Virginia.

By Judge CAMPBELL:

Q. You do not call that small, do you?—A. There are some pretty large tonnages come from there. The Fairmont is quite a large tonnage. Also certain amounts from the so-called Tunnelton region in West Virginia, which lies between the Georges Creek region and the Fairmont region in West Virginia.

Q. In the Piedmont section, I suppose?—A. Yes, it is off in that district.

By Mr. McREYNOLDS:

Q. Does not the Pocahontas coal come here?—A. No; no Pocahontas coal comes up here.

Q. How are the coals from these different regions which you have mentioned brought to New York Harbor?—A. By rail.

Q. All the way by rail?—A. All the way by rail.

Q. What railroads bring coals to New York Harbor from the Fairmont region of West Virginia?—A. They originate on the Baltimore and Ohio Railroad, and come forward as far as the Baltimore and Ohio, and then are delivered to the Philadelphia and Reading Railway.

Q. How far are the mines in the Fairmont region from New York Harbor?—A. I really can not tell you the mileage.

Q. Give us an estimate, please?—A. It would be a wild guess, because I really do not know.

Q. Do you know what is the rate of freight?—A. No, I do not.

Q. Are the rates of freight on bituminous coal to New York Harbor the same from all the regions from which bituminous coal comes?—A. Yes—not from Fairmont. From Fairmont is more and Georges Creek is more. Georges Creek and Fairmont have a higher rate than Myersdale or Somerset, Clearfield, and Beech Creek.

Q. Do you know whether the rate from the Fairmont region is as much as $1.50 a ton?—A. I think it is. To the best of my recollection, it is more than that.

Q. How much more than that?

Judge Moor. I object. If the rates on bituminous coal are involved in this case, without any allegation in the petition that has put the defendants on trial on the subject, and if a comparison in those rates and the anthracite rates is a competent comparison, then I object on the ground that the only competent proof of the rates on bituminous coal is the rate sheets or tariffs on file with the Interstate Commerce Commission, inasmuch as it now appears by the testimony of the witness that all this bituminous business to New York Harbor is interstate commerce, and therefore under the Interstate Commerce Act.

By Mr. McReynolds:

Q. Do you know what the rates are from the Clearfield region to New York Harbor on bituminous coal?—A. My recollection is that it is $1.50.

Q. Do you know how far it is from the mines in the Clearfield region to New York Harbor?—A. No, I do not know exactly. I should say, simply as an estimate, about 350 or 360 miles.

Q. How are the coals from the Clearfield region brought to New York? Over what lines of railway that deliver it in New York Harbor?—A. Over the Pennsylvania Railroad, delivered at South Amboy and the Harsimus piers in Jersey City.

Q. Are coals brought here from the Beech Creek region in Clearfield and adjacent counties in Pennsylvania?—A. Yes.

Q. Over what lines do they reach the harbor?—A. They originate, my recollection is, on the New York Central system.

Q. They originate on the New York Central lines?—A. On the New York Central lines.

Q. How are they delivered here?—A. First the New York Central, and the Philadelphia and Reading Railway, and the Central Railroad of New Jersey also.

Q. At what point on New York Harbor does the Philadelphia and Reading Railway deliver these coals?—A. At Port Reading. Then a large part of the coal that comes down is delivered by the Central Railroad of New Jersey at Port Johnston and Port Liberty too, I believe, near the terminal of the Central Railroad of New Jersey in Jersey City.

Q. Which of these regions from which bituminous coal is delivered to New York Harbor is the nearest to New York Harbor?—A. I should say Beech Creek.

Q. How far is it from the Beech Creek collieries to New York Harbor?—A. That I again can not tell you. I do not know exactly.

Q. Tell me whether it is 300 miles, 350 miles, or 400 miles?—A. I should say somewhere between 300 and 350 miles.

Q. What is the rate?—A. The same as the Clearfield rate.

Q. $1.50 per ton?—A. $1.50 per ton.

Q. How long has that rate been $1.50 per ton, if you know?—A. They had an advance of either 5 or 10 cents per ton a little over a year ago.

Q. Please put in the record a statement of the railroad companies which deliver bituminous coal at New York Harbor.—A. The Central Railroad of New Jersey.

Q. Which delivers at what point?—A. Which delivers bituminous coal at Port Johnston and Port Liberty. They may deliver a small amount at the other piers, I do not know. The Baltimore and Ohio Railroad; they deliver at St. George, Staten Island. They have a terminal and piers there. The Philadelphia and Reading Railway Company, at Port Reading. The Pennsylvania Railroad Company, at South Amboy and Harsimus. A little incidental coal may come down over some of the other lines, but this is the delivery of practically all of it, probably 95 per cent.

Q. Does the Lehigh Valley deliver any?—A. Occasionally they might get a car down, but it is a very unusual condition.

Q. Are the bituminous coals brought by the railroads which you have mentioned to New York Harbor, consumed in and about New York or are they shipped to other points?—A. The bulk of them are consumed in and around New York and in New York Harbor. A comparatively small amount is shipped along the Sound.

By Judge CAMPBELL:

Q. Do you include Brooklyn?—A. Brooklyn is a part of New York Harbor. Brooklyn and Long Island deliveries we include as New York Harbor deliveries.

By Mr. MCREYNOLDS:

Q. Give us the approximate selling prices of bituminous coal at New York Harbor?—A. To-day?

Q. Yes.—A. It depends entirely on the conditions. That is an impossible thing to give. You can get some bituminous coal to-day for $2.60 a ton and for other you will have to pay $3.20 or $3.30.

Q. So it varies from $2.60 to $3.30?—A. Just depending on the necessity of the man who sells it and the quality of his coal.

Q. There is no fixed price?—A. No; I wish there was. The coal market now is in bad condition. There is more coal being mined than there is consumption. The result is you can get some coal down, as I say, as low as $2.60, and from there all the way up to $3.30. Some people who have contracts are paying as high as $3.30.

By Judge CAMPBELL:

Q. There is the matter of quality, too?—A. There is a big question of quality also, and the ability to deliver. All those things come in.

By Mr. McREYNOLDS:

Q. How long have you been connected with this Bituminous Association?—A. Since, I think, the early part of 1901.

Q. Taking the time from 1901 up to now, what have been approximately the prices of bituminous coal f. o. b. New York Harbor?—A. Average?

Q. Give the range.—A. That would be very difficult to say. I can not compare those figures in my mind. It has been anywhere between $2.50 and $3.50. Those are the ranges, as a matter of fact.

Q. Somewhere from $2.50 to $3.50 per ton?—A. Yes, per gross ton f. o. b.

Q. Is that a ton of 2,240 pounds?—A. Two thousand two hundred and forty pounds, gross tons; yes.

Q. I show you a copy of the association letter issued by the Anthracite Coal Operators' Association for September, 1898. On page 7 I read this: "The individual operators whose tonnage will be free early next year, will have between eight and nine millions of tons to market on their own account." Look at that statement and tell us whether you wrote it and whether those facts were true [handing pamphlet to witness].—A. I undoubtedly wrote that and, so far as I know, the facts were true.

Q. Did you take action at that time to inform yourself about that?—A. Yes, its says "about" there and that would be correct, I think.

Q. What did you mean by being "free"?—A. That is, the old contracts would expire. That is my recollection.

Q. You mean the contracts which they had with the coal companies controlled by the railroads would expire in the early part of 1899?—A. That is evidently what is referred to there; yes.

Q. I show you a copy of the association letter issued by the Anthracite Coal Operators' Association, for January, 1899. From page 4 I read this: "Further, while maintaining these high freight rates against the individual operators, the railroads have openly been guilty of discriminating against them, both as regards the conduct of their own mines and in the transportation of the product of other companies. What is the rate being charged The Delaware and Hudson Canal Company? It is only a fraction of that which the Erie Railroad charges the individual operators on its lines." Look at that statement and tell us whether you wrote it and whether the facts were as you understood them then and now, and what you meant by the discrimination practiced against the individual operators?

Judge MOOT. I object. As far as I recall, there is nothing in the statutes or the decisions of the courts to the effect that the railways are to be condemned offhand, without trial or hearing, by the opinion of any gentleman in any magazine or newspaper, to the effect that they are guilty, where that gentleman states, as this witness has, that his only information on the subject was gathered from individual conversations with individual operators in which they made their individual charges against the railroads, and I respectfully

submit that government counsel should not put on the record of the court such a question, or permit a witness to answer such a question if he would be willing to answer it.

(Question read.)

A. To the best of my recollection I wrote the article, and the statements that are made there are those which were made to me by the operators, the members of our association, and were used in that way. We were not too exceedingly particular about getting everything down in the cold facts. We did not have to get down so far. What we were after was to drive the railroads as hard as we could from every point of view, and that statement, if I was called on to back up and prove, I could not prove. I could not have proved it at that time, excepting through the statements of our people, that so and so was the case, upon the strength of which I made this statement.

Q. Who were the individual operators being discriminated against at that time, according to your recollection?

Judge MOOT. I wish to make the same objection and the further objection that it further appears, by the last answer of the witness, that it is pure hearsay and, as such, it never was competent in either a civil or criminal court of this country, either state or federal. I object further that the witness is now asked to make a further hearsay declaration on this subject, without even being inquired of as to the person who gave it, or any reason for giving it from the lips of this witness instead of that witness, that he might be cross-examined, and we have neither time, place, nor circumstance in the record by which to try the truth or falsity of this hearsay statement thus put on the record without the sanction of an oath, through the mouth of this witness.

A. My recollection is rather hazy on that now. As it is in my mind, refreshed by that, I think what I was referring to there was a probable lower rate which we thought was being given to the Delaware and Hudson for the delivery of its coal, as compared with the rates that had been charged the operators. That is, the operators on the 60 per cent basis were not receiving as much back at the mines as The Delaware and Hudson Company would be getting if they had a lower rate. That is simply my recollection; I do not know that as a fact.

Q. These 65 per cent contracts that were made between the railroad interests and the independent operators, did they relate back to some time anteceding that date?—A. That I really do not remember. I had very little to do with those; in fact, knew very little of them.

Q. Can you tell us, while you were connected with the Anthracite Coal Operators' Association, whether there was a constant complaint on the part of those independent operators against the rate of freight that was charged?

(Objected to by Judge Moot on the ground that there is not anything in the statutes, or the petition, or the decisions that makes an ex parte complaint by a shipper a cause of action by the Government

and the ground of condemnation against the railroad without a hearing.)

Major WARREN. I would like to add the objection that the witness now is asked to state an alleged complaint that was given to him by somebody.

A. I can say very properly that there was not anything that the railroads did that the individual operators did not complain about.

Q. Please answer my question specifically.—A. As nearly as I can remember, the operators complained of the rates, and my opinion is that they would have complained of any other rate that they had.

Q. It was a constant source of complaint that these rates were too high?

(Major Warren objected to the question as incompetent.)

A. The constant complaint was that they wanted more money; they wanted a larger proportion.

Q. Answer my question specifically, please.

Judge MOOT. I object on the ground that the question of the counsel of the Government is incompetent, in form it is leading and violates the rules of evidence, and he may not put his own evidence in the mouth of the witness.

A. I can not answer that the complaints were directed at the freight rate being too high. The whole gist of the thing was that they wanted more money at the mines and wanted a larger proportion of the tide-water price. That comes back to that.

Q. How could that apply to individual operators who were selling their own coal?—A. The tide-water was the higher price, and if the other people were getting more money, they would get more money, naturally.

Q. How could they get more money from the railroad companies when they were not selling to the railroad companies?—A. I presume that would be done through the very matter you referred to, if there was an adjustment of rates, bringing it back to the same rate as the contract rate.

Q. Do I understand there was an adjustment of rates at that time?—A. I do not know that. I presume that there was. That was simply my idea.

Q. How did you get that idea?—A. As I said before in my answer, from talking with the operators.

Cross-examination by Major WARREN:

Q. You became secretary of the Anthracite Coal Operators' Association in 1895?—A. My recollection is it was in 1895.

Q. You continued in that position until 1901, as you now recall?—A. Yes.

Q. Where was your residence during those years of your occupation of the secretaryship of the association?—A. In New York.

Q. You resided here during all that time?—A. Yes.

Q. This periodical to which the government counsel has called your attention, was that printed here?—A. Printed here; yes.

Q. As you have already said, it was the result of your pen, speaking generally?—A. Yes.

Q. When you came into the association and entered into your relations with it as secretary, did you succeed somebody who had been secretary?—A. No; an assistant secretary, Mr. Green, I think. I do not recall his initials.

Q. Do you know where he lived?—A. He lived in New York.

Q. Then it was a going concern at the time you entered into its service?—A. Oh, yes; had been going for a number of years.

Q. You have said, hazarding a guess, as I thought it was, that perhaps one-half of the individual operators associated together under the name of the Anthracite Coal Operators' Association had contracts with the railroad coal companies, as we speak of them here?—A. Yes.

Q. That is, with the coal companies controlled by the railroad companies?—A. Yes.

Q. You would not undertake to say, would you, that that is a correct estimate of the proportion of them? There might have been two-thirds of them, in other words, that were under contract obligations to the railroad coal companies?—A. Yes; it might easily have been. I simply made a rough estimate.

Q. Do you not recall that the larger proportion of the membership of this association lived in what we commonly call the northern field; that is to say, in the vicinity of Wilkes-Barre and Scranton?—A. Yes; the majority of them did.

Q. That was the portion of the region in which the larger part of the so-called "independents" were operating during those years?—A. Yes; that is correct.

Q. You have said that Mr. Connell was the president of the association?—A. Yes.

Q. He resided in Scranton?—A. In Scranton; yes.

Q. In connection with your duties as secretary, do you recall that one of the objects of this "letter," so called, this periodical which you called the association letter, was to gather and disseminate information to the members of the association, and perhaps to the public generally, as to matters affecting labor and anthracite coal matters generally; as a sort of periodical to disseminate general information?—A. Yes; that was the prime purpose of the letter.

Q. You sought, did you not, to gather, from such sources as you thought were reliable, information as to the cost of labor and as to the various things which gentlemen interested in the development of the anthracite industry would be interested in?—A. Yes; all those matters.

Q. Do you recall asking different people what tonnage they produced and what their relations were with their labor and matters of that kind, in order to get sort of statistical information to give to the public in your periodical?—A. That had to be done constantly. That was done every month. Every month I went around to see them to get that information, and wrote to them about it.

That was the prime object of the association letter. It was largely statistical in its object.

Q. Then you maintained—though perhaps you did not style it that—you maintained, as the secretary of the association during your connection with it, a sort of a bureau for the dissemination of general information with reference to anthracite matters?—A. That is practically what is was, what the letter was.

Q. You not only had charge of the preparation of that monthly periodical, or whatever its term was—was it a monthly periodical?—A. Monthly; yes.

Q. You not only had charge of gathering material together that was printed in it, but also had oversight of the distribution of the numbers when printed, did you not?—A. Yes. That was done under the direction—we made up a mailing list under the direction of the committee—under the direction of the president.

Q. Your mailing list covered what, speaking roughly now? Any other persons than members of the association?—A. The mailing list, speaking roughly again, covered every prominent newspaper in Pennsylvania and New York; it covered all the operators; the officers of all of the railroads, the railroads interested in hauling coal, and, I think, fully half of the people who we thought were financially interested in general anthracite matters and railroad matters pertaining to anthracite. The total mailing list, my recollection is, was 300 or 350, and of that probably 60 or 70, not over 70, went to the operators themselves. The rest of it was scattered broadcast.

Q. Do you know what proportion of the so-called independent operators in the northern field were affiliated with your association?—A. No; I do not remember now, but very nearly all.

Q. You have said that you recall writing and printing in that periodical a statement that 8,000,000 of tonnage would be free, the number of the periodical being called to your attention, under date of September, 1898; that about 8,000,000 would be free the following year. Do you know what the total tonnage of those associated together with this Anthracite Coal Operators' Association was in 1898 and in September?—A. No; I do not.

Q. When you say "free," I suppose you had in mind that the contracts then in existence as between such of them as had entered into them with the railroad coal companies were terminating, as your information was, the following year. That is what you mean, is it?—A. That evidently is what was referred to there; yes.

Q. It had no relation whatever to the question whether those independents, so called, had some other properties, other leases from the railroad coal companies a part of the consideration of which was the shipment of the tonnage from the operation by a designated railroad? It had no association with that at all?—A. Not that I remember. I do not remember that in connection with it.

Q. Do you know what proportion of these companies had secured their lands, on which their coal operation had been developed and

their collieries constructed, from the so-called railroad coal companies by lease?—A. I do not. I never did get that correct information. I remember trying to get it at one time and being unable to.

Q. Do you not recall that Mr. Connell, the president of it at that time, was president and the largest owner of what was known as the Connell Coal Company, operating the William A. colliery, and that the lands that were associated with that operation were leased by The Lehigh Valley Coal Company?—A. I did not know that until the matter of the new contracts was taken up.

Q. You now know that that was the fact at that time?—A. Yes; I understand so.

Q. Residing here in New York during those years, you were not in touch with the changed condition or the changing conditions in our northern section of the anthracite region? I mean by that the fact that the best veins were being exhausted, or nearing exhaustion, and that the operators were therefore necessarily mining from the thinner and more expensive veins?—A. Only in a general way; through what people would say.

Q. From what you learned in connection with your duties?—A. Yes; those things came up more or less.

Q. And therefore that the manufacture of coal into a marketable commodity through the operators was constantly costing more to them?—A. Yes; that I knew decidedly.

Q. In connection with that, you learned, did you not, that there was a larger rate of wage paid in many instances prior to the general increase of 10 per cent which followed the strike of 1900?—A. Yes.

Q. That is to say, these gentlemen manufacturing coal there, whether independents, so called, or whether railroad coal companies, so called, had had a considerable increase in the cost of getting the coal into the car at the collieries by reason of the mining from the thinner and more expensive veins, the larger waste of coal in connection with the mining of those veins, the cost of dead work in driving to those veins, the distance of the mining in those veins from the foot of the shaft, and also the allowances made to the company men who were paid by the month and not by contract, as the miners were, and this all before the 10 per cent raise, so called, which followed the strike in the presidential campaign of 1900. You learned those facts, did you not?—A. Oh, yes; those were talked of constantly.

Q. Did you not also learn that this so-called increase made by the railroad coal companies in the fall of 10 per cent actually added, as a labor-cost proposition, considerably more than 10 per cent in connection with the manufacture of coal?—A. I did not know very much about the matter after that. I was abroad in the latter part of 1900 and had nothing whatever to do with that part of it. In 1901 I had very little to do with it.

Q. I understood you continued with them until 1901?—A. I did; but in the latter part of 1900 I was abroad and in 1901 there was very little further to do.

Q. You are not familiar, then, with the situation at that particular time?—A. No; I had helped prior to that to gather information which afterwards was used in considering these various matters.

Q. Of course, you learned enough in connection with your duties and your association with anthracite mining to ascertain that anthracite coal is a raw material as it comes up from the foot of the shaft to the top of the breaker?—A. Yes.

Q. And is there manufactured into a marketable commodity by the machinery in the breaker?—A. Yes.

Q. You learned that?—A. Yes.

Q. Therefore that it is quite a different proposition, as a marketable commodity, than bituminous coal, which, speaking generally, is sold by the run of the mine and does not require breaker preparation or manufacture?—A. Certainly.

Q. That is true, is it not?—A. Exactly.

Q. During the years that you were associated with the Anthracite Coal Operators' Association, did you not ascertain, in connection with your information bureau or in some other way, that there was constant bickering between the independents and the customers at tide or elsewhere, because of a difference in the preparation; that is to say, in the equalization and the standardization of sizes, and the quantities of refuse or per cent of refuse, contained in it?—A. Yes; those matters were all up.

Q. They were a constant cause of loss, financial loss, to the independent operators, were they not?—A. Yes; I think they were a financial loss to anybody who had to make an adjustment on that account.

Q. Do you not recall ascertaining that there was no uniform and general standardization of sizes of coal as manufactured and delivered to the consumer at about the time you last were associated with them?—A. My recollection is rather hazy on that. I remember there was no absolutely uniform adjustment all the way through. There were efforts made, if I remember rightly, in various parts to bring about an adjustment, but somebody else would object and they would start a plan. That was all very much mixed up.

Q. Bring it down to the concrete. Of the members of your association shipping coal, one might, in preparing grate, egg, stove, nut, or pea, have therein, when prepared for the consumer, for the market, a larger proportion of other sizes than grate, egg, nut, and pea, though in the size of pea, grate, egg, and nut, which would cause confusion here or wherever the coal was sold and complaint on the part of the customer; in other words, one would prepare it a little differently from another?—A. Yes.

Q. And there would be no way of ascertaining the proportion of chestnut that would be in pea or pea in chestnut? There would be no uniformity about that, I mean, one would prepare better than the other, in other words, or differently from the other; is not that true?—A. Exactly.

Q. Is it not also true that there was trouble because of the fact that one would send to market a larger proportion of bone—you know what I mean by that?—A. Yes.

Q. A larger proportion of bone and of slate and of other impurities than another would, and at times that resulted in lots being returned by the customer because of having an excess of impurities, so called. You remember all those various difficulties, do you not, coming up in connection with your information?—A. Very clearly; yes.

By Judge MOOT:

Q. As I understood you, this association of which you were secretary covered all the regions?—A. We had members in the Schuylkill, Lehigh, and Wyoming regions.

Q. You thought it covered practically all the independents?—A. Practically all; yes.

Q. In this matter of the rates on anthracite and bituminous, I draw the inference from your testimony—correct me if it has been drawn in error—that that subject was one that you yourself did not make a study of, or undertake to speak about as an expert; is that correct?—A. Yes; absolutely correct. I never was an expert on those matters, and simply took the information that was obtainable and used it as I thought most advantageous in my writing.

Q. For instance, to-day I suppose you could not say, as a matter of knowledge, whether it would be more profitable for a railroad to take run-of-mine bituminous coal from the Clearfield or Beech Creek district, at $1.50 a ton, and bring it to New York, taking back return loads to the same region, or whether it would be more profitable for the same railroad, say, to bring anthracite coal from the anthracite regions at substantially the same price, store it for a long time on clogged terminals, keeping its sizes and brands distinct, and ultimately returning the cars empty, in an inclement season of the year? You would not be able to say, as a railroad proposition, which would be the more profitable to the railroad?—A. No; I never have done either one or the other. As an engineer, I might venture an opinion on that.

Q. As an engineer, you realize that it would call for an intimate knowledge of all the facts to give an opinion that would be accurate as to which would be the more profitable?—A. Yes; a very intimate knowledge and close figuring.

Q. It would require intimate knowledge and close figuring to say which would be the more profitable?—A. Decidedly.

Q. You say the bituminous coal trade at present is in a bad condition, as I understood you, because the supply exceeds the demand; is that correct?—A. Yes.

Q. About what is the amount of bituminous coal being produced in this country?—A. My recollection is, last year it was about 400,000,000 tons.

Q. Is a large proportion of that 400,000,000 tons produced east of the Mississippi River and north of the Ohio?—A. Yes; by far the greater part of it.

Q. Is a very large proportion of that, again, produced east of the Mississippi and north of the Ohio, or near the Ohio, produced in the eastern districts in West Virginia, Maryland, and Pennsylvania, of which you have been telling us this morning?—A. A very large part is; yes. Of course, west of the Clearfield there is an exceedingly large tonnage.

Q. In West Virginia?—A. No; in Pennsylvania, west of the Clearfield region, between the Clearfield region and Ohio.

Q. Is there any of that bituminous coal, to speak of, produced east of the Alleghenies in the State of Pennsylvania?—A. No; I do not know of any.

Q. Then this bituminous coal is largely, the bulk of it, steam coal, used by factories for manufacturing purposes and to produce steam?—A. Yes.

Q. Manufacturers since October, 1907, have been running short time, on a low percentage?—A. Yes.

Q. Some of the large factories are not producing over 50 per cent of what they did produce?—A. Yes; and there is a very big falling off of railroad consumption, which represents a very large amount of that production.

Q. The railroads themselves use a very large amount of bituminous coal for their engines?—A. Yes; very nearly 30 per cent of the entire consumption in this country.

Q. During the period since October, 1907, there have been as many as 400,000 cars of the railroad idle and acres of railroad engines boxed up to protect them from the winter on the tracks of the railroads?—A. So I understand.

By Mr. McREYNOLDS:

Q. Do you know that?—A. Only by newspaper report.

By Judge MOOT:

Q. Up to the time of the cessation of industry to a certain extent in October, 1907, and of railway work as well, how was it? Was the bituminous coal supply in excess of the demand and the market in this bad condition?—A. For a short period of years there, for about two and a half years, the demand was extremely active. The mines had difficulty to keep up with it, and the railroads had exceeding difficulty in supplying the coal, in carrying the coal the mines could produce.

Q. That was the period immediately preceding October, 1907, was it?—A. No; not immediately preceding October. Things had slackened off through the summer. The down turn had commenced during the summer.

Q. It was the period then immediately preceding the summer of 1907?—A. Yes.

Q. During that period the price of bituminous coal, according to your information, was what might be called normal, or was it

abnormal?—A. No; it was a normal price, sometimes above normal; when there was a scarcity of coal and somebody wanted coal in a hurry, they would have to pay a little extra to get it.

Q. During that two or two and a half years you speak of, when business was running full tide, and the railroads had difficulty in supplying customers with bituminous coal, about what was the range of prices of bituminous coal?—A. In New York?

Q. Yes.—A. I should say between $3 and $3.50, depending on the grade of coal and the ability to deliver.

Q. The difference between $3 and $3.50 was a difference depending, according to your recollection, on the quality of the coal itself and the delivery of the coal?—A. The quality of the coal and the responsibility of the seller; that is, his ability to deliver, to guarantee delivery, and to make delivery.

Q. Since then, I gather from your testimony that the overproduction has forced some weak producers to sell their coal for what they could get, without regard to cost?—A. No; in a general way the price has gone off the general average. It is a sloping average, depending on the quality of the coal and the ability to deliver. That has gone off, and then, quite apart from that, some shippers have sent coal down to tide water expecting to deliver it on a contract, and the buyer did not want it; and, instead of forcing it on the shipper and allowing the demurrage to accumulate, he has preferred to offer it on the market through, say, one, two, three, or four agents, and, by the time they have talked about the cargo of 400 or 500 tons, it sounds like four or five thousand tons, and the market sounds glutted, full, and the price goes away down. Then a small lot of coal may go out at $2.50 or $2.60, something of that kind. Those are the little irregularities that come into the market and help pull it down.

Q. You spoke of the fact that this bituminous coal all came to this particular market by rail and not by water. Why does it not come by water?—A. The water rate would not let that coal come in here.

Q. Explain.—A. You have $1.40 freight from the Pocahontas or the New River region to Hampton Roads; then you would have to load it on vessel and bring the vessel up here. You could not do that for less than about 60 cents.

Q. A ton?—A. A ton; that would give you a total rate of about $2 or $2.10 a ton, as against a rate of $1.50 that you are getting by all rail from the Clearfield region here now. Even the lower cost of mining in the Pocahontas region would not enable you to do that; you could not get it in.

Q. About what is the difference between the cost of mining in the Pocahontas region, in favor of that region, as against the others you have named?—A. That is pretty hard to say; on the average, anyhow, 25 cents, if not more.

Q. A ton?—A. Yes.

Q. In that answer you made to Mr. Warren about the 8,000,000 tons that would become free in the near future, speaking of September, 1898, do you recall whether you considered at all in that connection the number of million tons that always had been free and figured that in as a part of the 8,000,000 tons, or whether you meant that 8,000,000 tons would become free that was not then free?—A. I really do not recall that.

Q. You could not tell about that?—A. No; I do not recollect at all.

Q. The object of this publication, this letter, you have stated. Was there any attempt also in the letter, when good opportunity presented itself, to put the thing about as strongly as you could in behalf of the independent operators, with the idea that it might catch the eye of these railroad men themselves and bring about some favorable consideration or concessions from them in behalf of the operators?—A. There was a very clear idea of that kind. That was what was done all the way through. We were presenting our side just as hard as we knew how.

Q. For all it was worth?—A. For all it was worth.

Q. I assume, from what you have said, that you had a great many of these conversations with the individual operators?—A. With our various members?

Q. Yes.—A. Yes; constantly.

Q. Almost countless?—A. Yes. They would come to New York, and then very frequently I would run up and go down all through the region, through the Schuylkill and Lehigh and up through the Wyoming, Pittston, Wilkes-Barre, and Scranton.

Q. For instance, take your article of January, 1899, about the high rates and guilty discrimination. Would you be able to give us the person, or any time or circumstance, by which we could locate the person on whose statements that article was founded?—A. No; absolutely none. That might have been from anybody that I talked to. I have not the faintest recollection.

Q. You speak in that article of "guilty discrimination." I assume you never studied law or read the statutes, and that you did not undertake to speak in the legal sense as to whether they were guilty or not.—A. No; in fact I understood a number of times that I had placed myself in a very awkward position, if somebody had chosen to take me up.

Q. You were speaking of moral guilt rather than legal guilt, if that construction would only be put on what you had to say?—A. That was desirable for our part; yes.

Q. I assume that The Delaware and Hudson Company was not in that association?—A. No; they were not.

Q. I assume from the article itself that what was said about the Delaware and Hudson coal and its transportation by the Erie was not founded on anything that you got, either from officials or others of The Delaware and Hudson Company or the Erie Company, either one?—A. No; decidedly not. Undoubtedly it came from talking with some of the operators.

Q. Could you give us either name or time and circumstance, so that we could locate the person on whose statements that part of the article was founded?—A. I could not possibly. It has been a long time ago and I could not recall it at all.

Q. Could you recall whether you inquired of that person for the purpose of ascertaining whether he knew at first hand what he was stating to you to be facts?—A. No; I could not tell. It might have been simply a casual statement that rested in my mind that I afterwards used in writing the article. I could not locate that; it is too far back.

Q. That was in 1899. Did you know at that time whether The Delaware and Hudson Company was selling to the Erie, or whether they had some traffic arrangement, by which the Erie transported the coal for them, they being the shipper, and paying the Erie for that transportation?—A. Of my personal knowledge, I did not know anything of that kind. I may have assumed something of that kind, or heard something like that. When I wrote this article that evidently was referred to there, was in my mind.

Q. Can you recall any of those facts so you can give us any of those details now?—A. No; I can not. I do not remember any of those things now. It has been out of my mind for a number of years.

Q. For instance, before publishing the article, do you remember whether you looked into things to see whether there was a prorating between the Erie and Delaware and Hudson companies, each doing part of the hauling and therefore the two companies dividing the established rate of that time between them on some agreed basis, so that the Delaware and Hudson should receive compensation for furnishing the tracks, gathering the coal and hauling it to the Erie, and the Erie should receive compensation for hauling it from that point to tide? Do you remember whether you went into anything of that kind or not?—A. No, I do not; and I think, as a matter of fact, it is doubtful whether I did, because the point was a strong point to make in the letter, and we were trying to drive at the railroads just as hard as we could.

Q. So far as you can recall, did you have in your mind or any information at the time to the effect that the arrangement between the Erie and The Delaware and Hudson Company was a simple prorating arrangement between the two companies for the transportation of the coal on an agreed basis of division of the rate to one for gathering and hauling to the other, and to the other for hauling from that point to tide?—A. I doubt very much—I do not remember now, of course—I doubt very much whether there was anything as specific as that in the information at the time. The probabilities are it was just the result of some statement that had been made which seemed to make a good point in what we were driving at.

Q. Having looked that article of January, 1899, over, is it not the fact, so far as you can judge from the article and your refreshed recollection, that the nature of the information you had on that subject, on which you based that article, was rather that there had been

a sale, a bogus sale, so to speak, by the Delaware and Hudson to the Erie, as the cover for a rebate, rather than any honest shipping transaction on a prorating basis between the Delaware and Hudson and the Erie?—A. No, it does not strike me in that way.

Q. It does not?—A. No.

Q. Having refreshed your recollection from reading the article over, can you give us any better than you have from recollection, what the nature of the information was that you had, even if you can not give us the individual or time and circumstances?—A. No, I can not. I can only say what was probable.

Q. I will let you say that.—A. It was probably merely a statement, or a suggestion, made in the course of conversation, made by one or the other operator, which occurred to me as being a good point, and I put it down in that way and used it to the best advantage I knew how. That was the way with the majority of the things that were put in the letter. The letter was for that purpose. We wanted to stir up the railroad people as hard as we could to get their attention.

Redirect examination by Mr. McREYNOLDS:

Q. Which railroad which delivered bituminous coal at New York Harbor delivered the largest amount?—A. I should say, offhand, the Pennsylvania Railroad.

Q. Where did the bituminous coals that were delivered by the Pennsylvania Railroad come from principally?—A. Principally from the Clearfield region in Pennsylvania.

Q. How do coals that are mined in West Virginia move to tide water at Newport News?—A. Those originating in West Virginia?

Q. Yes.—A. Over the Chesapeake and Ohio Railroad to Newport News, and over the Norfolk and Western Railroad to Norfolk.

Q. Since you have been acquainted with the bituminous coal trade, have bituminous coals come from Newport News to New York Harbor for sale?—A. No; I do not know of that.

Q. You have no knowledge of that being done in the past?—A. I have heard, before I had any connection with the bituminous coal trade.

Q. How long have you been connected with the bituminous coal trade?—A. Since 1900 or 1901; I think in the early part of 1901, to the best of my recollection.

Q. Your recollection is that prior to that time coals were brought to New York Harbor by water from Newport News?—A. I think an occasional cargo was; yes.

MARTIN P. BLAUVELT, a witness for the plaintiff, recalled.

Direct examination by Mr. TODD:

Q. At the request of the Government, you have made up a series of statements respecting the anthracite coal purchased from The Delaware and Hudson Company by the Hillside Coal and Iron Company?—A. Yes, sir.

Q. These are the statements, are they not [handing witness statements]?—A. They are.

Mr. Todd offered the statements in evidence as government exhibits, as follows:

Government Exhibit No. 146 is a statement of the total amount of coal purchased from The Delaware and Hudson Company by the Hillside Coal and Iron Company from July 1, 1902, to September 30, 1908.

Government Exhibit No. 147 is a statement of the coal purchased from The Delaware and Hudson Company from June 30, 1902, to September 30, 1908, and shipped to New York Harbor points.

Government Exhibit No. 148 is a statement of the average price per ton received at New York Harbor by the Hillside Coal and Iron Company for coal purchased from The Delaware and Hudson Company.

Government Exhibit No. 149 is a statement of the coal purchased by the Hillside Coal and Iron Company from The Delaware and Hudson Company from July 1, 1902, to September 30, 1908, and shipped west.

Government Exhibit No. 150 is a statement of the average price per gross ton received at Chicago, Ill., by the Hillside Coal and Iron Company for such of the coal purchased from The Delaware and Hudson Company as was sold by the Crescent Coal and Mining Company from July 1, 1902, to April 30, 1908.

By Mr. Todd:

Q. Was not the bulk of the coal shown on the statement of the coal purchased from The Delaware and Hudson Company and shipped west sold at Chicago prices?—A. Yes, sir.

Q. Is not the bulk of the coal shipped to New York Harbor in any given month sold during that month?—A. Very much the largest part of it.

Q. What part of this coal which was sold at New York Harbor was sold by Williams & Peters, if any?—A. Only a small portion of it.

Q. Would you call it so small as to be virtually negligible? Was it by accident, in other words?—A. It was not intended to be sold by Williams & Peters when it was shipped from the mines, but everything happened to that coal that happens to coal. It was mixed with Hillside, and sometimes Williams & Peters sold it, when there was a demand. Probably there was never 10 per cent of it sold by Williams & Peters; I should think hardly that.

Q. The contract, as I recall, provided that Ward & Olyphant should sell the coal?—A. Yes.

Q. When Williams & Peters sold any of it, did they receive for those sales the compensation which Ward & Olyphant would have received; that is, 15 cents for prepared sizes and 10 cents for small sizes?—A. No, sir. They received up to July, 1905, 2½ per cent of the selling price, and from that time on 2 per cent.

Q. You think that the proportion of this coal, which was sold at New York Harbor by Williams & Peters, would amount to 10 per cent?—A. I doubt it; but I say that is the maximum, in my opinion.

Q. All of this Delaware and Hudson coal comes to Weehawken or Edgewater, does it not?—A. That comes to tide water; yes, sir.

Q. Is that about evenly divided between Weehawken and Edgewater, or does the bulk of it go to one or the other?—A. The bulk of it goes to Weehawken.

Q. The sum of the tonnage shown on the statements as tonnage shipped west and that shown on the statements as shipped to and sold at New York Harbor, is not equal to the total tonnage purchased by the Hillside Company from The Delaware and Hudson Company?—A. That is correct.

Q. Will you state what that difference is?—A. The difference is the tonnage which was purchased and shipped east and went into stock at different points and its identity lost.

Q. The identity of this coal as Delaware and Hudson coal was lost, but it eventually did go from the stocking points to tide water, did it not?—A. No; not necessarily. It might have gone anywhere.

Q. One of these statements shows that during the period July 1, 1902, to April 1, 1904, the Hillside Company sold to the Crescent Coal and Mining Company that portion of the coal which it purchased from The Delaware and Hudson Company, which it was to have shipped west?—A. That is correct.

Q. Did it sell it to the Crescent Coal and Mining Company for exactly the same price which it paid The Delaware and Hudson Company?—A. It did.

Q. Do you know anything about this Crescent Coal and Mining Company? It is a corporation, is it not?—A. It is.

Q. Does the Hillside Coal and Iron Company or the Erie Railroad Company own any stock in it?—A. Not any.

Q. Do you know if it is in any way affiliated with the Erie Railroad Company?—A. Not at all; affiliated is a broad word. It did sell coal for the Erie coal companies.

Q. There is no fixed relation?—A. None at all. No officer of that company is an officer of any of the Erie companies, nor does the Erie own any capital stock.

Q. In the present agreement between the Hillside Coal and Iron Company and The Delaware and Hudson Company for the purchase by the former of coal from the latter, it is provided that the prices are to be based on the Ruley averages, and that is all I find in that agreement respecting the price which the Hillside Company agreed to pay The Delaware and Hudson Company for the coal purchased under that contract. Does that phrase mean that those prices are the same as those contained in the usual 65 per cent contract?—A. The Erie does now and always has paid on the basis of those prices, the usual 65 per cent contract.

Q. Does the Pennsylvania Coal Company now market any of its coal?—A. Markets it all, practically.

Q. Does it not sell some at the mines to the Hillside Company?—A. I do not think they do. If there is any, it is on that statement, but I do not think they sell any. The Hillside sells to the Pennsylvania.

Q. The Hillside Coal and Iron Company sells to the Pennsylvania Company?—A. Sells some to the Pennsylvania, but the Pennsylvania, I think, markets all of its own coal.

Q. Are the prices which the Pennsylvania Coal Company receives for its coal kept separate from those the Hillside Coal and Iron Company receives for its, or are they lumped together?—A. They are kept separately.

Q. Do you know whether they are reported to Mr. Ruley separately or together?—A. I think they are reported separately.

Q. The average prices of the Pennsylvania Coal Company and the Hillside Coal and Iron Company are kept separate and distinct?—A. They are.

By Judge CAMPBELL:

Q. Are they reported separately to Ruley?—A. I think they are, but I would not swear to that positively. I think they are.

By Mr. TODD:

Q. Are the prices of the coals which come from collieries on the property of The New York, Susquehanna and Western Coal Company kept separately?—A. Not that I know of.

Q. Were they ever that you recall?—A. They were in 1898, when it was an entirely separate corporation. That is, The New York, Susquehanna and Western Coal Company shipped over The New York, Susquehanna and Western Railroad in 1898, and for a time thereafter neither the Pennsylvania Coal Company nor the Hillside Coal and Iron Company shipped over that road. Then when the Pennsylvania Coal Company began shipping over that road as well as over the Erie there was one return made for the coal sold at tide by the company, whether shipped over the Erie or over the New York, Susquehanna and Western Railroad.

Q. The question was whether separate prices were kept for the coal which was taken from collieries on the property of The New York, Susquehanna and Western Coal Company?—A. For a time.

Q. Down to what time?—A. I think down to possibly later than 1901; 1902. That was only when The New York, Susquehanna and Western Coal Company was the shipper.

Q. So, from the time that The New York, Susquehanna and Western Coal Company began selling its coal at the mines to either the Hillside Coal and Iron Company or the Pennsylvania Coal Company, the prices of the coal of that company were no longer kept separately?—A. They were not, so far as I know.

Q. Do you know whether the Erie Railroad Company owns the capital stock of a small railroad called the Moosic Mountain and Carbondale Railroad Company?—A. It does.

Q. All of it?—A. All of it.

Q. Has it always owned all of it?—A. From the time it owned any.

Q. Do you know when that time began?—A. The Erie Railroad Company, I think, ever since its reorganization has owned it. It was acquired there some time by the receiver of the New York, Lake Erie and Western, or by the New York, Lake Erie and Western Railway.

Q. Do you know whether the Erie Railroad promoted this Moosic Mountain and Carbondale Railroad, or the predecessor of the Erie Railroad caused it to be organized?—A. That is not within my knowledge at all. I think it was built by Whitney & Kemmerer, if I am not mistaken.

Q. I show you a certified copy of the articles of association of the Moosic Mountain and Carbondale Railroad Company. Will you read from that the part marked section 3?—A. "That the places from and to which the said railroad is to be constructed or maintained and operated are as follows, viz: Beginning at a point at or near the city of Carbondale, in the county of Lackawanna, at a connection with the New York, Lake Erie and Western Railroad (or a branch thereof called the Jefferson branch) and extending to a junction with the Erie and Wyoming Valley Railroad between the Marchwood colliery and the city of Scranton, in said county of Lackawanna."

Q. It appears from this certified copy that this railroad company was organized on February 12, 1887. I am correct in that, am I not?—A. According to this; yes.

Q. Is the capital stock of the Susquehanna Connecting Railroad owned by either the Erie Railroad Company or The New York, Susquehanna and Western Railroad Company?—A. It is owned by The New York, Susquehanna and Western Railroad Company.

Q. All of it?—A. All of it.

Q. For how long has it owned it?—A. I could not tell you. It was since a time prior to 1898.

Q. I show you a certified copy of the articles of association of the Susquehanna Connecting Railroad, dated December 15, 1896. Will you read into the record section 3 of that, please?—A. "That the places from and to which the said railroad is to be constructed, maintained, and operated are to be as follows, viz: From a point on the Wilkes-Barre and Eastern Railroad, at or near Paddys Land, 11 miles easterly from the city of Wilkes-Barre, in the county of Luzerne, State of Pennsylvania, and running through the counties of Luzerne and Lackawanna to a point on the Priceville and Winton Railroad in the borough of Winton, county of Lackawanna, and State aforesaid."

Q. Do you know what this Priceville and Winton Railroad referred to in this paragraph is?—A. I do not.

Q. How near to Winton does any line of the Erie Railroad pass?—A. I could not tell you. That is in our annual report. My recollection is there is a branch to Winton Junction.

(Annual report handed to witness.)

The WITNESS. The annual report shows that the Moosic Mountain and Carbondale Railroad extends from Winton, Pa., to Marchwood, Pa., a distance of 4.2 miles.

By Mr. MCREYNOLDS:

Q. How long have you been connected with the New York, Susquehanna and Western Railroad?—A. Since 1898.

Q. How long have you been connected with the Erie Railroad?—A. About 20 years.

Q. You became connected with the New York, Susquehanna and Western when it was bought out by the Erie?—A. Yes, sir.

Q. What is your relationship to each road?—A. I am comptroller of each.

Q. How much of the capital stock of The New York, Susquehanna and Western Coal Company is owned by the railroad company of the same name?—A. I could not tell that offhand.

Q. You said a while ago something about when the Pennsylvania Coal Company commenced to ship coals over both the Erie and the New York, Susquehanna and Western to tide water, as I understand you?—A. Yes.

Q. When did that begin to be?—A. The Pennsylvania began to ship some time subsequent to 1901, but just when I could not tell you.

Q. How did it become practicable for the Pennsylvania Coal Company to ship over the lines of The New York, Susquehanna and Western Railroad Company?—A. Some of its collieries were practically tributary to The New York, Susquehanna and Western Railroad Company's lines.

Q. And had been during the years prior to 1898?—A. That I could not tell you. I presume they had always been; I do not know. I will not say, because back of 1898 I was not familiar with either the Pennsylvania Coal Company's nor The New York, Susquehanna and Western Coal Company's affairs.

Q. Are the coals from the collieries of the Pennsylvania Coal Company now shipped in part over the tracks of the New York, Susquehanna and Western to tide water in New York?—A. Yes, sir.

Q. And part are shipped over the tracks of the Erie Railroad?—A. Yes, sir.

Q. The coal mined from the collieries of the Pennsylvania Coal Company is, at least nominally, sold to the Hillside Coal Company. Is that true?—A. That is not true.

Q. All the coals then from the collieries of the Pennsylvania Coal Company are sold by the Pennsylvania Coal Company?—A. I think all of it.

Q. In the market?—A. Yes.

Q. Through what agency?—A. Williams & Peters.

Q. And upon the same terms that the Hillside Coal and Iron Company sells through Williams & Peters?—A. Yes, sir.

Q. Is it a part of your business to know the financial condition of the Hillside Coal and Iron Company and the result of its operations?—A. Yes, sir.

Q. What have been the results of its operations during the last three years financially?—A. I do not recall, to give you the figures.

Q. Have they made a profit?—A. I think sometimes they have and sometimes they have not.

Q. That company, I believe, has never paid a dividend?—A. No, sir.

Q. Were you acquainted with the arrangements between The Delaware and Hudson Company and the Erie, by which the coals of the former company were sent to New York Harbor?—A. You mean the purchase arrangement?

Q. Yes.—A. Somewhat.

Q. There is an existing contract now?—A. I do not understand there is an existing contract. I think it has been offered in evidence, all there was to that. I think it was just some correspondence.

Q. Prior to the contract of 1902 were you acquainted with the arrangement under which that coal was sold?—A. No; it was sold by The Delaware and Hudson Company.

Q. Were you acquainted with the terms of settlement between the Erie Company and The Delaware and Hudson Company?—A. You mean for the coal?

Q. Yes.—A. No; I do not know of anything.

Q. Did not The Delaware and Hudson Railroad Company sell coal to the Hillside Coal and Iron Company prior to 1902?—A. July, 1902, was the first.

Q. The first contract?—A. Yes, sir.

Q. Were you acquainted with the arrangements under which The Delaware and Hudson Company shipped over the Erie's lines coal mined from the collieries of the former to New York Harbor?—A. Yes; more or less.

Q. Did you make the settlements between the two roads with reference to those shipments?—A. I very likely did.

Q. Do you know what sort of freight rates were paid by The Delaware and Hudson Company on those shipments?—A. I do not. They were shipped all over the Erie lines, and I presume they paid the tariff rates. That is my presumption. I would not testify to it positively.

Q. You do not know anything about a rebate that was given to them on those coals?—A. I never heard of a rebate.

Q. Do you know what the arrangement was about a division of freight between them?—A. That is a long time ago. I do not remember it.

Q. Do you know why an arrangement was made to sell the coal to the Hillside Coal and Iron Company by The Delaware and Hudson Company?—A. I never was consulted why.

Q. You do not know why?—A. No; I was never taken into any one's confidence in that respect.

Q. What becomes of the coal that is mined by the collieries controlled by The New York, Susquehanna and Western Coal Company?—A. You mean the coal controlled by purchase?

Q. No; I mean both the coal that they purchase and the coal they produce.—A. They do not produce any.

Q. Have they never produced any?—A. Not to my recollection.

Q. What becomes of the coal they purchase?—A. It is sold at the mines to the Pennsylvania Coal Company now, I think; all of it.

Q. Then the result is that The New York, Susquehanna and Western Coal Company purchases coal and sells it at the same mines from which it receives it, to the Pennsylvania Coal Company?—A. Yes, sir.

Q. Then what does the Pennsylvania Coal Company do with it?—A. Sells it.

Q. In the market?—A. Yes, sir.

Q. In 1898, when the New York, Susquehanna and Western Railroad was acquired by the Erie, what was being done with the coals purchased at that time by the coal company of the same name?—A. Sent to market and sold by that coal company.

Q. Over the tracks of the railroad company of the same name?—A. That or connecting tracks.

Q. When was this arrangement made under which all the coals purchased by The New York, Susquehanna and Western Coal Company were sold at the breakers where received to the Pennsylvania Coal Company?—A. I think it was in 1901, but the statements furnished you prior to this tell all that. No; pardon me; I do not think it was prior to 1901. I think it was after that, but the statements you have tell that.

Q. Does The New York, Susquehanna and Western Coal Company purchase coals from these collieries upon what are known as the 65 per cent contracts?—A. Yes, sir.

Q. Are these contracts made between the owners of the colliery and The New York, Susquehanna and Western Coal Company?—A. Yes, sir.

Q. Upon what terms does the New York, Susquehanna and Western sell these same coals at the same point where it receives them to the Pennsylvania Coal Company?—A. The same price.

Q. What does The New York, Susquehanna and Western Coal Company get out of it?—A. It is the company that has the contract. It gets nothing.

Q. Is it out anything on account of it?—A. No, sir.

By Mr. TODD:

Q. You said a while ago, in answer to a question, that much the larger part of this Delaware and Hudson coal, which the Hillside Company purchases and ships to New York Harbor in any given month, was sold during that month?—A. Yes, sir.

Q. That statement applies to all coal, does it not?—A. I should rather think so.

Cross-examination by Judge MOOT:

Q. When the Erie Railroad bought the stock of the New York, Susquehanna and Western Railroad, The New York, Susquehanna and Western Coal Company was then a coal company owning, or leasing, a large amount of coal land which in turn it leased to operators who were mining from it?—A. Quite a number of acres; yes, sir.

Q. It was not conducting mining operations itself at the time, was it?—A. No, sir.

Q. Its interest in the mining operations conducted on these lands was in the royalties that it received from these operations?—A. Yes, sir.

Q. Do you recall whether or not those leases provided in substance that the coal produced on the lands thus leased should find its way over the railway of the New York, Susquehanna and Western?—A. I think most of them did so provide.

Q. That is your best recollection?—A. Yes, sir.

Q. Most of those mining operations on the lands of The New York, Susquehanna and Western Coal Company are still being continued, are they not?—A. Most of them.

Q. Under those leases they tie that tonnage up to that railway, as you recall them, or most of them; is that correct?—A. That is right.

Q. After the Erie came to own the stock of the New York, Susquehanna and Western Railroad, which owned the stock of The New York, Susquehanna and Western Coal Company, and also came to own the stock of the Pennsylvania Coal Company, the Erie then owning and controlling those two coal companies, finally caused The New York, Susquehanna and Western Coal Company to sell its coal to the Pennsylvania Coal Company, for economical operating reasons or something of that kind?—A. Largely that. I think one of the other reasons was that it was almost impracticable to keep them entirely separate under the selling agency plan.

Q. Ward & Olyphant were spoken of by counsel as being specified in the Delaware and Hudson contract as the people to sell; are they so specified, or is it simply that the coal shall be sold by some one satisfactory to The Delaware and Hudson Company?—A. Probably that is the wording.

Q. That is the way it is put, according to your recollection?—A. My recollection is that that is it.

Q. This Moosic Mountain Railway, instead of running from the Jefferson branch of the Erie Railroad to the Wyoming Valley Railroad Company between the Marchwood colliery and the city of Scranton, in fact only runs from the Jefferson branch of the Erie to what colliery?—A. The Moosic Mountain; I will not say that it does run to the Jefferson branch. I do not like to testify to that. My recollection is that it is disconnected.

Q. So that it is not actually connected even with the Jefferson branch of the Erie?—A. I do not think it is.

Q. The coal goes from that colliery to which that Moosic Mountain Railway runs, over that Moosic Mountain and what railway to market? What is the connection by which it finally gets out, or do you not remember?—A. I do not remember. I think it is the Delaware and Hudson.

Q. The Delaware and Hudson Company?—A. I think so.

Q. At Carbondale?—A. Yes.

Q. So that, according to your recollection, it has to move first from this colliery over the Moosic Mountain and Carbondale Railway and then over the Delaware and Hudson to some place where the Delaware and Hudson makes a junction with a tide-water road, whether that is the Erie or some other road?—A. Yes, sir.

Q. That comes to tide?—A. Yes; that comes to tide.

Q. This Moosic Mountain colliery is known as the Marchwood colliery, is it not?—A. I think so.

By Major WARREN:

Q. And it is at the place called Marchwood?—A. Yes.

By Judge MOOT:

Q. I think you looked at this certificate of incorporation of this Moosic Mountain and Carbondale Railroad Company and then told us that the Erie did not promote that, but that that was promoted by the Moosic Mountain Coal Company and others in the interests of that company?—A. I really do not know a single thing about that certificate. I never saw it before, and I would not know it if I examined it now.

Q. Of the $150,000 in capital stock of the railroad, of $50 each that was provided for, this certificate of incorporation shows that 591 shares were subscribed for by the Moosic Mountain Coal Company, per W. W. Watson, treasurer, Scranton, Pa., does it not?—A. Yes, sir.

Q. And that the other subscriptions were subscriptions of one share each by Mr. Kemmerer and other gentlemen, nine in number?—A. Yes, sir.

Q. The railroad, then, that was to be built under that certificate never was built, except in part?—A. As I understand it; yes, sir.

Q. This Susquehanna Connecting Railway Company, according to the certificate of incorporation, was to be, as near as may be, 22 miles in length; is that correct?—A. Yes, sir.

Q. It was to connect a point on the Wilkes-Barre and Eastern Railroad, near to this land, with a point on the Priceville and Winton road, in the borough of Winton?—A. Yes, sir.

Q. Was that all built?—A. I could not say positively.

Q. Then your best information is that this was not, in fact, a railroad to be constructed, but was a charter to connect up various railroads that had been built?—A. That is my understanding of it.

Q. In fact, it runs, as you know, from Paddys Land on the Wilkes-Barre and Eastern Railroad to the two Jermyn collieries?—A. Yes, sir.

Q. Does it meet any others, as you understand?—A. I think in that there are some other collieries.

Q. Which are reached by it?—A. I am not certain about that, though. I would not testify to it.

Q. Is it an expensive piece of railroad or is it not?—A. I should not think it was very expensive. I think it was capitalized—I do not know, but I think its capitalization and bonded debt, its capital stock was $500,000 and its bonded debt $500,000. That is a million dollars.

By Major WARREN:

Q. For about 3 miles?—A. That is not as much as some.

By Judge MOOT:

Q. When you said what the presumption was about the Delaware and Hudson coal previous to 1902, when the written contract was made, did you mean that it was your best recollection that that coal was shipped by the Delaware and Hudson over the Erie on a basis of prorating the rate from the point of shipment to the terminal?—A. I should think it was, but I can not testify to that positively. I know that it was not purchased by the Erie Railroad; it was shipped by the Delaware and Hudson itself.

Q. Your best recollection would be that the shipment was paid for to the Erie by a prorating of the through rate from the point of shipment to the point of delivery between The Delaware and Hudson Company and the Erie Company?—A. It probably was. As I say, my recollection is not clear. That was in a subordinate department and it was not a thing that I necessarily came very close to.

Q. Do you know anything about this Pennsylvania coal that now goes out over the New York, Susquehanna and Western, or is that an operating proposition?—A. That is largely an operating proposition, I think.

Q. Do you feel confident to speak about it?—A. I think an operating man can speak better than I can.

Redirect examination by Mr. MCREYNOLDS:

Q. Do I rightly understand that in 1898 and prior thereto The New York, Susquehanna and Western Coal Company was shipping coal over the New York, Susquehanna and Western Railroad into New York Harbor and selling it here on its own account?—A. That is my understanding.

Q. When the Erie Railroad acquired the New York, Susquehanna and Western, or after the Erie acquired The New York, Susquehanna and Western Railroad Company, in 1898, how long thereafter did The New York, Susquehanna and Western Coal Company continue to ship coals to New York Harbor and sell them there on its own account?—A. I think two or three years and possibly longer.

Q. Then what was the change?—A. First The New York, Susquehanna and Western Coal Company sold the coal at the mines to the Hillside Coal and Iron Company. I think it was first to the Hillside Company and I think afterwards to the Pennsylvania Coal Company.

Q. The first change that was made then, we will say, was somewhere about 1900 or 1901?—A. Somewhere around there.

Q. Was that, that The New York, Susquehanna and Western Coal Company turned over to the Hillside Coal and Iron Company its purchases of coal at the mouth of the collieries where it received them?—A. Yes. The first thing that happened was that some of the collieries which had formerly shipped over the New York, Susquehanna and Western Railroad and sold the coal to The New York, Susquehanna and Western Coal Company, having been purchased by other companies, they no longer shipped their coal over the New York, Susquehanna and Western Railroad; I think Johnson or Greenwood or some of those were the first ones. The change was not made until the volume of coal purchased by The New York, Susquehanna and Western Coal Company and shipped over the New York, Susquehanna and Western Railroad had materially decreased. Then the first move after that, the Hillside Coal and Iron Company shipped coal over the New York, Susquehanna and Western Railroad. I think that is the first one, the Hillside prior to the Pennsylvania.

Q. You think the Hillside Coal and Iron Company took the coals which had been purchased by The New York, Susquehanna and Western Coal Company?—A. Shipped all of it at the mines and sold it, paid for it at the same price without either loss or gain to The New York, Susquehanna and Western Coal Company, shipped it to tide and other places and sold it on its account, the Hillside Coal and Iron Company's account.

Q. And at a subsequent time to when?—A. I do not like to fix dates, but I think it was probably in 1903 or 1904, something like that.

Q. So that the Pennsylvania Coal Company had been acquired by the Erie Company before the Pennsylvania Coal Company took over the coals which were nominally bought in the name of The New York, Susquehanna and Western Coal Company?—A. It was after, of course, because the Erie did not control the Pennsylvania at all, had no jurisdiction, and the Pennsylvania did not ship over the New York, Susquehanna and Western Railroad until after the Erie bought the control over the Pennsylvania Coal Company, and I think it was two or three years after that. Those arrangements or divisions between the New York, Susquehanna and Western and the Pennsylvania Coal Company and the Pennsylvania Coal Company and the Hillside Coal and Iron Company were always for convenient operating reasons, or for the reason that they wanted some kind of an accounting, and the coal was mixed up. It was just for that purpose always.

By Judge Moot:

Q. To preserve the identity of the coal so you could keep an account?—A. We absolutely could not always preserve the identity, and, having one sales agent—Williams & Peters were the sales agents for the Susquehanna Coal Company, the Hillside Coal and Iron

Company and the Pennsylvania Coal Company—sometimes they would sell a cargo of coal to one customer that might have been purchased by The New York, Susquehanna and Western Coal Company and be dumped right in a cargo, in the pit, with another car of Pennsylvania coal or Hillside coal, so that the fewer you had working that way the better it was for every purpose you could find, and that was the reason those shifts were made. It was sold first to the Hillside Coal and Iron Company for the reason that the Hillside Company was practically the only shipper, and the Pennsylvania did not. Then when the Pennsylvania Company became a larger shipper over the New York, Susquehanna and Western, it was sold to the Pennsylvania Company for just the same convenient reasons.

By Mr. McREYNOLDS:

Q. Can you give us approximately how much coal was being sold annually at tide by The New York, Susquehanna and Western Coal Company in the years just prior to 1898?—A. No, sir.

Q. Can you not give us any idea at all?—A. I can not; because I do not know of a single record. I have tried to ascertain that. It is possible that it is in the printed pamphlet in that government suit in 1902. Unless it is in that, I can not give it to you.

Q. Was it a considerable tonnage?—A. Undoubtedly it was a considerable tonnage.

Q. Would you say a million tons?—A. I would not like to say. I should think it was, but I do not know.

By Judge MOOT:

Q. What company or companies bought up those collieries that used to ship over the New York, Susquehanna and Western after the Erie acquired the stock of the New York, Susquehanna and Western?—A. I think the Delaware and Hudson purchased some, but I do not know. I can not recollect. In fact, I do not think I had to know, except that we lost it.

Q. But you lost the tonnage?—A. Lost the tonnage; yes.

Q. Because some railroad got the collieries, or some railroad coal company got the collieries, and from that time on the tonnage went by the railroad that bought it, or the railway whose coal company bought it?—A. I have understood that possibly some of them were bought by individuals. I do not know. I think they were, though.

(At half-past 1 a recess was taken until half-past 2.)

CLARENCE D. SIMPSON, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. McREYNOLDS:

Q. Please give your residence and business.—A. Scranton, Pa.

Q. What is your business?—A. I suppose you would call me a coal operator.

Q. How long have you been connected with the anthracite coal business?—A. About fifty years.

Q. In what part of the anthracite section?—A. In what is known as the Wyoming and Lackawanna field.

Q. I believe you are not now actively engaged in mining coal?—A. I have an interest in an anthracite property.

Q. Were you not for a long time actively engaged as a mine operator?—A. Yes.

Q. With whom were you associated? Were you a member of the firm of Simpson & Watkins?—A. Yes.

Q. How long was that firm in business?—A. About twenty years.

Q. When was it dissolved and ceased to operate?—A. It was not a coal firm. All the collieries we owned or controlled we had a majority interest in the stock. Simpson & Watkins's firm ran the merchandise stores connected with the collieries.

Q. When was this firm of Simpson & Watkins dissolved? When did it cease to carry on its business?—A. I do not think there was a regular dissolution of it.

Q. Is it in existence now?—A. No; not as I understand it.

Q. When did it quit doing business as a firm?—A. About 1899.

Q. From 1879 to 1899 Simpson & Watkins were engaged in the business of mining anthracite coal in the Wyoming region?—A. The firm was known as Simpson & Watkins; but we, as a firm, did not own any coal mines.

Q. I understand the firm owned stock in collieries?—A. Mr. Watkins and I had stock in several collieries. Simpson & Watkins ran several stores.

Q. Did not the firm own stock in these collieries?—A. Not as a firm.

Q. Individually you and Mr. Watkins owned it?—A. Mr. Watkins owned some and I owned some, and we had several different partners in each of the different collieries.

Q. The general business was known, however, as the business of Simpson & Watkins?—A. I suppose because we were prominent in the control of them they were known as the Simpson and Watkins collieries.

Q. How many of those collieries were there?—A. Seven.

Q. Did you control all seven of them from, say, 1879 until 1899?—A. We had the largest interest in them.

Q. Where were those collieries located in reference to some town in the region?—A. There were two of them near Forty Fort; one at Wyoming; one at Duryea; one at Mayfield, near Mayfield; one near Carbondale. We bought two more, I think, the Sterrick Creek and Lackawanna Coal Company, practically; we did not buy them all; we bought into them.

Q. During the time that you and Mr. Watkins controlled these collieries, what did you do with the output of them?—A. Sometimes we sold to the railroad, sometimes we sold it ourselves.

Q. During the first part of the time when you owned them, did you sell the output to the railroads or sell it yourselves?—A. Both.

Q. Where did you sell it when you sold it yourselves?—A. In the general market—in New York, Oswego, Buffalo—wherever we could get what we called a market for it.

Q. Did you have agencies at those points?—A. No.

Q. Did you sell your coal to be delivered at the mouth of your colliery, or to be delivered at the point where it was to be consumed? A. I think we did it both ways; sometimes the collieries, sometimes delivered. Anything going to Oswego went to Canada; it was delivered aboard a vessel. Anything in the interior we sold at the collieries.

Q. You say you sold part of it to the railroad companies. What railroad companies?—A. The Erie; Lehigh Valley. Are you going back to the first start, or in the interim? Afterwards we sold some to the Ontario and Western and some to the Delaware, Lackawanna and Western railroads.

Q. Were all seven of those collieries which you controlled in the same general districts?—A. No; there were, between one end and the other, probably 20 miles.

Q. The extreme distance between any two was probably 20 miles?—A. Yes.

Q. What railroads connected with these collieries?—A. Do you mean with each one?

Q. Yes.—A. The Lehigh Valley connected with the Forty Fort; the Delaware, Lackawanna and Western Railroad and the Lehigh Valley Railroad connected with the Mount Lookout colliery at Wyoming, and the Babylon, and Duryea, only the Lehigh Valley. The Sterrick Creek had two connections, The Delaware and Hudson Company and the Delaware, Lackawanna and Western. The Edgerton had only the Erie. The Northwest had the Erie and the New York, Ontario and Western railways. The Lackawanna colliery that I bought into had the Delaware, Lackawanna and Western, the New York, Susquehanna and Western, and the New York, Ontario and Western railways.

Q. When more than one of these railroad companies connected with these collieries, was there anything there hindering you from shipping over whichever line you preferred?—A. Where we had two connections?

Q. Yes.—A. No. We were always asking for more cars. There was not anything to hinder us.

Q. Were you at liberty, where you had more than one railroad connecting with the collieries, to ship over either line you might elect?—A. Yes, sir.

Q. The difficulty with you, you say, was because you were always asking for more cars?—A. Cars were scarce, and we wanted to run full. If the Lehigh Valley did not give us cars enough, we would ask the Delaware, Lackawanna and Western to put in some.

Q. To which of these railroad companies did you sell coal?—A. I do not know. You have got to go back in ancient history to get that.

We finally sold all the coal to the railroads, but, while we had the cars and the transportation, we sometimes sold our own coal.

Q. When did you cease to have the cars and the transportation there?—A. I do not believe I could tell you that.

Q. Was there a change in the method of the railroads' action toward you at any time?—A. I do not know what you mean by that.

Q. You said a while ago that while you had the cars and the railroads there you sometimes sold your own coal, and finally said you sold all your coal to the railroad companies. Why was that change of plan?—A. I suppose that I would have to say that I always thought that the railroad people ought to buy the individual operators' coal, and I had been consistent in trying to get them to do it and, until we finally accomplished this, we once in a while had to sell our own coal.

Q. Why did you think the railroads ought to purchase the individual operators' coal?—A. I thought that was the best way to handle the business. Understand that anthracite coal is a domestic fuel and it is used in the winter time, and to get the consumer and the dealer to buy it through the summer time you have to give them some inducement. I talked to the railroad people a good many years. I said: "The thing you ought to do is to buy the individual operators' coal at the mines on some agreed system, or price, or something of that kind, because we can not induce the consumer to take our coal in the summer time and give the men full work through the summer time. We can not get the dealers to stock up and we can not afford to have yards and agencies all over, as you can."

Q. About when did you begin to sell all the output of your several collieries to the railroads?—A. I made a deal with Mr. McLeod on Washington's Birthday in 1892 to take the total at the collieries on the basis of a percentage of New York price.

Q. Who was Mr. McLeod?—A. He was president then of the Reading and had leased the Jersey Central and Lehigh Valley railroads.

Q. Did he agree to take the output of all your mines?—A. All the mines there were contributory to those railroads that he controlled.

Q. What about the other mines?—A. He had nothing to do with them.

Q. What became of their coals? Did you sell them to anybody?—A. I do not remember whether we did just then or not. We did soon afterwards. They paid the same price he did.

Q. What other railroads took your coals after that?—A. The Delaware, Lackawanna and Western, the Erie, the New York, Ontario and Western railroads.

Q. All on the same basis?—A. All on the same basis.

Q. What was that basis?—A. Sixty per cent of the tide-water price on the large sizes and different on the pea and buckwheat.

Q. For how long were those contracts to continue?—A. Seven years.

Q. Do you know whether other operators in the same section where your collieries were located were selling the output of their collieries to the railroads on substantially the same terms that you were?—A. Practically, most of them. Some of them did not.

Q. Do you know when the practice of individual operators selling the output of their collieries to the railroads began?—A. I could not tell the exact date.

Q. About when?—A. We opened the Edgerton colliery in 1884, I think, and we sold the product at the colliery for three years, at 46, 47, and 48 per cent.

Q. Of what?—A. Of the collieries at Edgerton.

Q. Forty-eight per cent of what? Tide-water prices?—A. Tide-water prices.

Q. To whom did you sell it?—A. Sold it to the Hillside Coal and Iron Company, through Andrew Langdon.

Q. The Hillside Coal and Iron Company was controlled by the Erie Company?—A. The Erie; they loaned us the money to build a branch in, and controlled the tonnage. The next contract we made was with the Erie, at 55 per cent, through the Hillside Coal and Iron Company. The next one was through Mr. McLeod, at 60 per cent. Whenever these contracts ran out, you know, we dickered, just as you would try to buy a horse. We wanted 65 per cent and they would say 57, and we finally took 60.

Q. Did you ever, while you were operating, get as much as 65 per cent?—A. I am getting it now.

Q. What collieries are you interested in now?—A. The West End colliery.

Q. To what company does it sell its output?—A. Sells half of it to the Reading, through The Lehigh and Wilkes-Barre Coal Company, and half we sell to the Pennsylvania Railroad interests, the Susquehanna Coal Company, without any contract.

By Mr. WARREN:

Q. But on the 65 per cent basis?—A. Yes; without any contract, though. We can sell our own coal if we want to.

Q. How about the People's?—A. They get 65 per cent.

Q. You are interested in that; Mr. McReynolds asked you what companies you were interested in now.—A. I was.

By Mr. MCREYNOLDS:

Q. Do you know what occasioned the increase from 48 per cent to 55 per cent?—A. It cost us more to mine the coal. We get down below water level and there are impurities in the veins and they are thinner, and the timber is more expensive, and wages have been advanced, so we have to get more money to come out even or make a profit; and it is a question, when contracts run out, of barter.

Q. When the contracts run out you are always demanding more?—A. Naturally.

Q. Do you know when you got the increase from 48 to 55 per cent?—A. No; I do not know the date; probably fifteen years ago.

Q. Was it about the time the New York, Susquehanna and Western Railroad came into that region?—A. No; I do not think they had anything to do with it, because they did not come into any place where we had any collieries.

Q. But they did come into that region?—A. Yes. They gave 50 per cent.

Q. Then did the other people begin to give 50 per cent?—A. No; I think the other people hung back a while. They thought that was too much.

Q. Finally they gave 55?—A. The Erie did.

Q. When did you and Mr. Watkins sell out the interest in the collieries which you controlled to The Temple Iron Company?—A. 1898 or 1899; I am not certain; nine or ten years ago.

Q. Were you actively engaged, you personally, in the negotiations which led up to that sale?—A. Yes, sir.

Q. With whom did you negotiate?—A. Robert Bacon, esq.

Q. Who is Robert Bacon, esq.?—A. A member of the firm of J. P. Morgan & Co.

Q. What did J. P. Morgan & Co. have to do with The Temple Iron Company?—A. Nothing that I know of.

Q. What was Mr. Bacon's relationship to The Temple Iron Company?—A. I was asked what I would take for the collieries and we met one afternoon and Mr. Robert Bacon was there. I did not know whom he represented. The Temple Iron Company charter was bought afterwards and we paid for it.

Q. You met Mr. Robert Bacon somewhere?—A. Yes.

Q. Where was this?—A. In Mr. H. McK. Twombly's office.

Q. Where was that office?—A. Mills Building, here in New York City.

Q. You met there Robert Bacon, of the firm of J. P. Morgan & Co.?—A. Yes, sir.

Q. And he inquired what you would take for your collieries?—A. Yes, sir.

Q. Did you tell him?—A. Yes, sir.

Q. Follow the negotiations along.—A. I told him.

Q. Then what happened?—A. He thought it was too high, and we discussed it, and we said we would not take anything less. We said, "We have 40,000,000 tons of coal in the ground and we have a capacity of 7,500 tons a day. We can mine it for so much a ton and we will take so much money for it. We have got so much invested in improvements. If our figures about improvements are not right, we will take off half a million dollars." He said, "Would you be willing to submit it to a technical examination?" We said, "No, we will not. We will get up our figures and show them to you, and if you do not like it, you need not take it. If we haven't got that much money invested, we will take off half a million dollars." On that basis we showed our figures and they took it. The Temple Iron Company we did not know anything about.

Q. When these negotiations were going on with Mr. Robert Bacon, you knew nothing about The Temple Iron Company?—A. No.

Q. It was with Mr. Robert Bacon, of this firm of bankers here in New York City, that you had the negotiations and it was to him you showed the figures?—A. Yes, sir.

Q. Did he accept the proposition?—A. I don't know that I showed him the figures, but I furnished the figures and somebody showed them to him. The deal was consummated.

Q. Did Mr. Bacon accept your proposition?—A. Somebody gave us the money.

Q. I want to know where you and Mr. Bacon came to an agreement, if such a thing happened?—A. Really, I never saw him afterwards.

Q. Whom did you see after that in connection with this matter?—A. Nobody; except we went to the Guaranty Trust Company and got our money.

Q. You do not know who supplied it?—A. No.

Q. Did the Guaranty Company pay you in cash?—A. Check; and I very gladly indorsed it. I am awfully sorry now I took it.

Q. You do not know whom Mr. Robert Bacon represented?—A. No.

Q. You had not heard of The Temple Iron Company up to that time?—A. No, sir.

Q. What was your first information about The Temple Iron Company?—A. I understood they had a charter that you could do almost anything under except commit murder, and they bought it for that purpose.

Q. Who bought it?—A. This crowd that was to buy our collieries. I do not know who bought it.

Q. Did you have anything to do with the purchase of the charter?—A. We paid for it.

Q. Who is "we?"—A. Simpson & Watkins and our other partners paid $151,000 for The Temple Iron Company charter.

Q. Simpson & Watkins bought The Temple Iron Company charter?—A. I mean the crowd. I am not saying Simpson & Watkins did it, but we thought it was a good charter and we bought it and used it.

Q. Who was it that wanted it?—A. I do not know.

Q. For whom were you acting when you bought the charter of The Temple Iron Company?—A. That was part of the deal.

Q. Understood between you and Bacon?—A. No. We thought we had a good charter and we would finance the company and turn in the stock, and we paid in $151,000 for the charter and gave them four hundred and odd thousand dollars working capital and we took stock and bonds.

Q. Who paid that $151,000?—A. I suppose it was paid out of what might be called a syndicate.

Q. You do not know who the other members of the syndicate were?—A. No.

Q. Were you at any time president of The Temple Iron Company?—A. Never.

Q. Was Mr. Watkins?—A. Yes.

Q. When?—A. When it was formed and took over this property. He was president for one or two years.

Q. What was the business of The Temple Iron Company prior to the time it was bought out by you gentlemen?—A. It owned a little pig iron furnace.

Q. Down in Reading?—A. Near Reading.

Q. What was the object in the buying up of that charter?—A. Because it had a broad charter.

Q. The purpose was to get the use of that charter?—A. Yes.

Q. Do you know what the capital stock of The Temple Iron Company was at this time?—A. At that time?

Q. Yes; $240,000, do you remember?—A. I do not know.

Q. You paid $151,000 for it?—A. Yes.

Q. Was the stock then increased with your concurrence and active assistance?—A. Surely.

Q. To what point?—A. I think $6,000,000.

Q. Did you take stock in it for your collieries, or were you paid cash for the collieries?—A. We took stock and cash and bonds.

Q. Did you hold that stock and those bonds, or was it understood you should turn those over for cash at once?—A. I held them as long as I could.

Q. It was no part of the arrangement that such stock——A. We were to get so much money for the collieries. How they worked out the plan I do not know, but we got part cash, part bonds, and part stock.

Q. For your collieries?—A. Yes.

Q. Did Mr. Watkins become at once the president of The Temple Iron Company?—A. I think within the next two or three months.

Q. Were your stocks, which enabled you to control these seven collieries, turned over to The Temple Iron Company?—A. Yes.

Q. And you received from them the cash and the securities of The Temple Iron Company?—A. Yes, sir.

Q. Do you know who took the other part of the bonds and stock of The Temple Iron Company?—A. No; I do not.

Q. Do you know what railroads became interested in that company?—A. No, with the exception of hearsay.

Q. You were a stockholder?—A. I was not a director.

Q. Were the bonds that you took guaranteed by any railroad company?—A. I think they were, but I am not certain.

Q. Do you know the proportion in which those bonds were guaranteed by these different railroad companies?—A. I do not.

Q. You did not even hear that discussed?—A. I might at that time, but if I have I have forgotten it. We did not want our bonds guaranteed.

Q. You thought they were safe?—A. We thought they were safe, anyway, but if anybody's bonds were going to be guaranteed we wanted ours guaranteed.

Q. And you got them guaranteed?—A. Yes.

Q. Which railroad guaranteed the bonds which you had, do you know?—A. I do not.

Q. Do you remember who else was present when you and Mr. Bacon met in Twombly's office?—A. Mr. Twombly was there; I think Mr. Maxwell; Mr. Thomas.

Q. Who was Mr. Maxwell? What was his full name, and what was his railway connection?—A. J. Rogers Maxwell; he was then president of the Jersey Central.

Q. What was Mr. Thomas's full name and his connection?—A. Mr. E. B. Thomas, president of the Erie.

Q. Was Mr. Baer there?—A. No.

Q. Mr. Truesdale?—A. No.

Q. Did the Philadelphia and Reading Railway reach any of the collieries controlled by Simpson & Watkins?—A. No; but the Jersey Central could reach them, and that was controlled by the Reading.

Q. The Jersey Central could reach them?—A. Yes.

Q. What do you mean by could reach them?—A. By building their lateral or taking the coal from the other road to their terminal.

Q. The Jersey Central could take the coal from certain of your collieries and take it to tide water?—A. Yes; they ran into Wilkes-Barre and up to Scranton. They could have had part of the tonnage if they wanted it, because there was an interchange of freight up there between any railroad on a lateral of 15 cents a ton.

Q. How long has that arrangement been in existence up in that country, that there was an interchange?—A. I think twenty-five years.

Q. The arrangement has been that it was an interchange by any railroad by paying the gathering road 15 cents a ton?—A. Yes, sir.

Q. Did that apply to all the railroads running into Wilkes-Barre and Scranton?—A. Yes; I think that was an understood agreement; instead of building a lateral they would pay 15 cents a ton.

Q. And that has been the agreement for twenty-five years?—A. Yes.

Q. So that you could ship, if you desired, coals from any one of your collieries to tide water over the Jersey Central Railroad?—A. Yes, sir.

Q. Or over the Lehigh Valley Railroad?—A. Yes, sir.

Q. Or over the Delaware, Lackawanna and Western Railroad?—A. Yes.

Q. Or over the New York, Susquehanna and Western Railroad?—A. Yes, sir.

Q. Or over the Erie Railroad—A. Or over the Erie; yes.

Q. Were there any other roads that you might have shipped the coals from your collieries over?—A. The New York, Ontario and Western Railroad.

Q. How about the Delaware and Hudson?—A. We did not like them very well, so we did not give them any tonnage.

Q. But you might have, if you had liked them better?—A. I do not know about that, either. They might not have taken it. I think it was mutual; we did not like each other.

Q. When Simpson & Watkins shipped the output of the collieries to New York State, or any other point outside of Pennsylvania, I presume the question of freight rate was an important one?—A. When we sold our own coal?

Q. Yes.—A. Quite.

Q. Was the freight rate the same over all the roads by which you could have sent your coals to New York Harbor?—A. Not always.

Q. I presume the difference was not very great?—A. We thought it was.

Q. Tell us how much difference there was.—A. The New York, Ontario and Western Railroad made us a rate that was lower than the Delaware, Lackawanna and Western Railroad or Lehigh Valley Railroad would make.

Q. Was that their published rate, or was that a private rate?—A. Open to everybody; it was not published, I guess, then, but everybody knew it.

Q. How was the rate fixed? Was it a flat rate or was it based on percentage?—A. It was a flat rate.

Q. Of how much?—A. It was different at each station, you know. I could not tell you.

Q. Give us the nearest station to New York.—A. New York was 40 per cent of tide-water prices. At each station along the Ontario and Western line they had a different, fixed flat rate that was open to everybody.

Q. At New York Harbor how was the rate fixed?—A. Forty per cent of tide-water price.

Q. Was that over all the roads?—A. That was over the New York, Ontario and Western Railroad.

Q. How about the other roads?—A. They did not do that. They made an open rate—arbitrary rate.

Q. Did they make adjustments at the end of the month or at the end of any other period?—A. No; I wish they had.

Q. They would not do that?—A. No.

Q. They charged you a flat rate and returned you nothing?—A. Returned us nothing.

Q. How much was that rate?—A. I think it was changed from time to time. It was about $1.65 a ton.

Q. And that on the Ontario and Western?—A. Was 40 per cent of the tide-water price.

Q. Was that the road that you patronized principally in your shipments to tide water?—A. From the collieries it could reach, yes.

Q. Over the other roads did you pay a higher or lower rate?—A. We thought it was higher. It depended on the price of coal. Sometimes it was higher, sometimes it was not.

Q. Do you know why Mr. Robert Bacon wanted to buy your collieries?—A. I did not know then, but I think now he thought it was a bargain.

Q. You think he got a bargain?—A. I do.

Q. Do you know now whom he represented in the negotiations?—A. No; I do not.

Q. Do you know now what sort of contracts existed between the collieries which Simpson & Watkins formerly controlled and the railroads over which the coals are shipped?—A. I think I know. I think it is 65 per cent of the tide-water price.

Q. And for the life of the colliery?—A. I guess so; yes. I think so.

Q. Did you have anything to do with the negotiation of that new form of contract by which the independent operator was to get 65 per cent if he would tie up his tonnage for the life of his collieries?—A. With these collieries?

Q. Any of those collieries.—A. No; I was out of business then.

Q. Do the collieries in which you are interested now have such contracts?—A. Yes, sir.

Q. When were they made?—A. About seven years ago.

Q. Do they tie up the output of the collieries for their entire life?—A. Yes, sir.

Q. Why were you willing to make a contract of that sort?—A. I was not.

Q. Why did you do it?—A. I thought it was the best thing I could do.

Q. What do you mean—that it was the best thing you could do?—A. Because I would rather sell to the railroad than start different yards and take care of the consumer, and I could not get any contract unless I tied it all up.

Q. The railroads would not buy it from you unless you gave them a contract for the life of the collieries; is that it?—A. That is it. Of course, I suppose they wanted the tonnage.

Cross-examination by Mr. WARREN:

Q. You say you have been in the coal business for fifty years?—A. Yes.

Q. You went into the coal business when you were very young?—A. Yes.

Q. You went into the coal business fifty years ago in what way, first?—A. When I worked for the Pennsylvania Coal Company as an errand boy, carried water with a yoke on my shoulders and a pail at each end.

Q. Without going into particulars, after leaving the Pennsylvania Coal Company and that employment, you were associated with the mining and manufacture of anthracite coal in different positions down to 1879, were you not? That is to say, you have been a foreman of a breaker, have you not?—A. No; I have not.

Q. Have you been assistant foreman?—A. Yes.

Q. Have you had the practical side of it at all?—A. I have been in charge of the Butler Colliery Company when I was very young.

Q. That is where?—A. In Pittston.

Q. When was it that you came back from your residence in Buffalo? What year?—A. I think 1879.

Q. At that time you started in again to associate yourself with the mining of anthracite coal?—A. Yes, sir.

Q. What was the first operation which you acquired an interest in as an owner?—A. In the Pancoast colliery.

Q. That is situated in the Lackawanna Valley and some 6 or 8 miles north of Scranton, is it not?—A. About 4 miles north; yes.

Q. At that time Mr. Watkins was not associated with you in any way?—A. No.

Q. Then, after getting interested in the Pancoast, the next was the Grassy Island, was it not?—A. Yes.

Q. You were a part owner of that colliery operation, were you not?—A. Yes, sir.

Q. Do you remember in what year that was?—A. I think 1882 or 1881.

Q. That is situated at or near Peckville, in Lackawanna County, or in the Lackawanna Valley?—A. Yes, sir.

Q. What was the next colliery that you became interested in as an owner?—A. The Northwest.

Q. That was in what year?—A. I should say about 1883. I am not positive, but about that time.

Q. When you were interested in the Pancoast, do you remember what railroad that coal was shipped by?—A. The Delaware, Lackawanna and Western.

Q. To whom did those controlling that colliery sell their coal?—A. Mr. Sanderson and I controlled it and we sold it to Stickney & Conyngham.

Q. They were sales agents here in New York at that time for anthracite coal, were they not?—A. Yes, sir.

Q. And were the sales agents of the coal companies controlled by the Pennsylvania Railroad?—A. That was their largest business.

Q. While you were with the Pancoast, did you sell any coal to the Delaware, Lackawanna and Western Railroad?—A. No, sir.

Q. You were with that colliery but a very short time?—A. A couple of years.

Q. Then you sold out your interest to Mr. Sanderson, did you not?—A. Yes, sir.

Q. Then the Grassy Island was the next. In that company you were associated with other gentlemen, were you not?—A. Yes, sir.

Q. To whom did you sell your coal then?—A. I was associated with Mr. Andrew Langdon, who was a salesman, and he sold the coal at the collieries.

Q. In what way?—A. He distributed it and took a commission of 15 cents a ton and gave us the balance.

Q. He sold it at the colliery and then it was shipped by what railroad?—A. The Erie.

Q. The Erie did not have any railroad into the Grassy Island colliery, that is to say the Erie Railroad proper, did it?—A. No, sir.

Q. How, then, did the coal from that colliery get to the Erie Railroad?—A. The Delaware and Hudson Canal Company took it to Carbondale and gave it to the Erie.

Q. There connecting with the Jefferson branch of the Erie Railroad?—A. Yes.

Q. If any of that coal were consigned to purchasers at tide, it would come across the mountain over to Honesdale, would it not, and there be delivered to the Erie?—A. No; it then went to Susquehanna and went down the Erie.

Q. It still went by the Jefferson branch to Susquehanna, and there struck the main line, and then came down to New York by the main line?—A. Yes.

Q. This Grassy Island property is now known as the Sterrick Creek Coal Company, is it not?—A. Yes, sir.

Q. After you had been interested in the Grassy Island for some length of time, you sold out your interest in that colliery, did you not?—A. Yes, sir.

Q. During the time you were associated in it, the coal was all disposed of in the way you have outlined, through Mr. Langdon at the breaker, Mr. Langdon being an interested party with you in that operation?—A. Yes, sir.

Q. Up to this time, up to the time that you started the Northwest operation, Mr. Watkins was not associated with you in any way, was he?—A. He was associated with me in the stores.

Q. Mr. Watkins became a partner of the firm of Simpson & Watkins in what year?—A. We did a mercantile business; I do not remember the year.

Q. It was in the early 80's, was it not?—A. Yes.

Q. The only way that Simpson & Watkins, as a firm, were ever associated together was that they owned the mine stores, so called, that were run in the vicinity of the different colliery operations in which you were interested?—A. Yes; and that is the only interest that Simpson & Watkins ever had together as a firm.

Q. And Simpson & Watkins had those stores at the colliery operations when Mr. Watkins was not interested as an operator at the collieries, before that time?—A. Yes, sir.

Q. When you started the Northwest colliery in the early 80's—that is situated 3 or 4 miles north of Carbondale, is it not?—A. Yes, sir.

Q. You organized the Northwest Coal Company (Limited) did you not?—A. Yes, sir.

Q. Did Mr. Watkins then acquire an interest with you as a coal operator?—A. Yes, sir.

Q. That was his first relations with you?—A. Yes, sir; first relations with me in the coal business.

Q. That was, as near as you can fix, 1882 or 1883?—A. 1882 or 1883.

Q. That colliery was situated how far from the Jefferson branch of the Erie?—A. It was alongside it.

Q. There was a spur built in?—A. Yes.

Q. What I want to know is the length of that switch that was built in.—A. Probably a thousand feet.

Q. You leased some coal there from the Hillside Coal and Iron Company, did you not?—A. No, sir.

Q. When you originally started, was the lessor the Wallace?—A. And the Morss.

Q. Subsequently you acquired some coal from the Hillside Coal and Iron Company, did you not?—A. No, sir.

Q. You shipped, however, over the Jefferson branch?—A. Of the Erie.

Q. Did you sell that coal, when you first shipped from the Northwest, yourself, or did you sell it to the Hillside Coal and Iron Company?—A. I sold it through Mr. Langdon.

Q. Up to what time?—A. I do not know; two or three years.

Q. You remember, do you not, that very shortly after you started that colliery operation—that is, within a few years at any rate—you made a contract with the Hillside Coal and Iron Company for some of its coal?—A. I think you are right in that. I had forgotten it. I think about 17 acres.

Q. The New York, Ontario and Western Railroad was not built into our valley until 1890, was it?—A. I am not certain about the date, but it was not built then, when we started the colliery.

Q. Fix the date as near as you can, if my suggestion does not refresh your recollection as to the time.—A. I should think 1890 would be nearly right, but I can not remember.

Q. Their main line running down our valley was some distance away from the location of the Northwest Coal Company's (Limited) colliery, was it not?—A. Yes.

Q. You recollect, do you not, that they built in a spur line or a branch to your breaker?—A. Yes.

Q. You made a contract with whom then? You say the New York, Ontario and Western; is it not the fact that your contract was with Dickson & Eddy, sales agent of the coal company?—A. Yes, but the New York, Ontario and Western guaranteed it.

Q. I will come to that in a minute; but was not the contract made with Dickson & Eddy?—A. Yes, Dickson & Eddy.

Q. Dickson & Eddy were the sales agents of the coal companies which were controlled by the New York, Ontario and Western Railroad Company? They were their sales agents, were they not?—A. Yes, sir.

Q. And you say that contract with Dickson & Eddy—which was in writing, was it not?—A. Yes, sir.

Q. Was guaranteed by the railroad?—A. Yes, sir.

Q. And that provided for your shipping from that colliery 100,000 tons a year, did it not?—A. Yes, sir.

Q. It also provided that that coal should be shipped by the New York, Ontario and Western Railroad?—A. Yes, sir.

Q. They having built this switch in to the colliery, can you give me an idea of the distance of that line that they have to build to get to your colliery from the main line of the road?—A. About a mile.

Q. Then they constructed from the line which they built into the coal regions from Hancock, in the State of New York, wherever it was, they built a switch from that line, which was about a mile in length, and reached your colliery?—A. Yes, sir.

Q. That entailed upon the railroad company a considerable expense, did it not, to build that mile of road?—A. I should think so.

Q. It, of course, was of no value other than to tap your collieries? In other words, to get coal from your colliery?—A. That is all the revenue.

Q. And would be worthless when that coal was exhausted; is not that right?—A. Sure.

Q. Will you tell us the next operation with which you became associated?—A. The Edgerton colliery.

Q. Was Mr. Watkins a stockholder in the company that was organized to acquire that operation?—A. No, sir.

Q. What was the form of the company under which you managed the Edgerton property? What was the name of it?—A. Edgerton Coal Company, Limited.

Q. You organized a limited copartnership and in that way acquired the property known as the Edgerton colliery?—A. Yes, sir.

Q. Can you tell us what year that was?—A. No; it was about the same time, though, 1883 or 1884. A little later than the Northwest.

Q. That property was situated 2 or 3 miles south of Carbondale, was it not?—A. Yes, and 2 or 3 miles back in the country, too.

Q. Two or 3 miles away from the center of the valley and up on the hillside?—A. Yes, sir.

Q. Near the outcrop of the coal deposit?—A. Yes, sir.

Q. I understood you to say to the Government counsel that at that time the Erie loaned you money which aided you in the acquisition of that property and in its development?—A. They loaned us the money to build the improvements, and built the branch in that connected with the Delaware and Hudson.

Q. How long a branch did they build in to connect with the Delaware and Hudson?—A. About 2 miles.

Q. That branch served no other purpose save to get the coal from the Edgerton to the main line of the Delaware and Hudson Railroad?—A. Nothing else.

Q. You say that you organized the Edgerton Coal Company, Limited. Was that limited copartnership association afterwards changed into a corporation known as the Edgerton Coal Company?—A. I do not remember. It was a limited copartnership, I understood,

only for twenty years. I suppose we changed it, but I do not remember it.

Q. Do you not remember that the Edgerton Coal Company, Limited, was changed by you gentlemen controlling it into a corporation under our general corporation laws prior to your sale of those properties to The Temple Iron Company, and that the Northwest was treated in the same way; that is to say, the limited copartnership known as the Northwest Coal Company, Limited, was changed into the corporation known as the Northwest Coal Company?—A. I could only answer that, that my counsel probably advised me what was best to do, and I probably did what they advised, and you were our counsel.

Q. What I want to know now is the fact.—A. I do not know.

Q. Allow me to call your attention to the contract which is attached to the answer filed by The Temple Iron Company in this case, and marked "Exhibit A," an agreement dated February 27, 1899, which purports to be signed by you and Mr. Watkins, and The Temple Iron Company, by George F. Baer, as president. I wish you would look over that contract so as to refresh your recollection, if you can, as to whether that is not the contract which you entered into with Mr. Watkins, with The Temple Iron Company, at the time of the acquisition of the several companies which you and Mr. Watkins controlled by The Temple Iron Company?—A. Of course, I have no recollection of this.

Q. I want to know whether, before you sold to The Temple Iron Company, these coal companies—the Edgerton Coal Company (Limited), and the Northwest Coal Company (Limited)—were not changed from a limited copartnership form into a general corporation form?—A. I should think from this that they were, but I do not remember it.

Q. The contract to which I called your attention designates them as a corporation in each instance, does it not?—A. Yes, sir.

Q. That leads you to believe that the form of those companies was changed prior to this sale to The Temple Iron Company, does it not?—A. Yes, sir.

Q. The Edgerton Coal Company (Limited) and the Edgerton Coal Company, after it was changed into a corporation, sold its coal how?—A. At first we sold it through Andrew Langdon. Afterwards we sold part of it ourselves. Then finally we sold it to the Erie at 55 per cent, then 60, and then 65.

Q. You never sold at 65 from the Edgerton Coal Company, did you?—A. No; I think we sold out to The Temple Iron Company before we got 65 per cent.

Q. So that the last contract you had was 60 per cent?—A. 60 per cent, yes.

Q. The coal, to get away from that colliery, had to come down this branch to which you have referred and then utilize the Delaware and Hudson Railroad from the junction point of that branch with it below Carbondale, to Carbondale, and connected at Carbondale with

the Jefferson branch of the Erie Railroad; is not that right?—A. Yes, sir.

Q. What was the name of the place where that branch connected with the Delaware and Hudson Railroad south of Carbondale?—A. Mayfield.

Q. Which is how far south of Carbondale?—A. About 2 miles.

Q. Will you tell me, please, the next colliery which you and Mr. Watkins and others acquired after the Edgerton?—A. I think the Babylon and the Mount Lookout were the next two.

Q. The Babylon is situated in Duryea?—A. Yes, sir.

Q. How many miles south of Scranton?—A. About 6 miles or 7—7 miles.

Q. Do you not remember that you acquired the Mount Lookout before the Babylon, or am I mistaken about that?—A. No; we acquired the Mount Lookout first.

Q. The next in order after the Edgerton was the Mount Lookout?—A. Was the Babylon—no, the Mount Lookout next, and then the Babylon next.

Q. Then the Mount Lookout was next after the Edgerton, and was before the Babylon?—A. Yes, sir.

Q. In acquiring the Mount Lookout property, you organized a corporation, did you not, known as the "Mount Lookout Coal Company?"—A. Yes, sir.

Q. And you and Mr. Watkins were part owners of the stock of that corporation?—A. Yes, sir.

Q. And there were other gentlemen who were owners of the balance of the stock?—A. Yes, sir.

Q. That operation was situated where?—A. Wyoming.

Q. How far away from the Edgerton property?—A. About 22 miles.

Q. In the Wyoming Valley?—A. Yes, sir.

Q. Which is a different valley from the Lackawanna, is it not?—A. Yes, sir.

Q. That Mount Lookout Coal Company colliery is situated practically on the main line of the Bloomsburg division of the Delaware, Lackawanna and Western Railroad, is it not?—A. Yes, sir.

Q. Any other of the coal carrying roads at that point?—A. The Lehigh Valley had a branch down there.

Q. What was the name of that branch?—A. I do not know as it had any name.

Q. You do not recall that it was called the "Coxton branch," then?—A. No; Coxton is where they assemble the coal.

Q. But you do not recall that this branch was called that?—A. No.

Q. How did this branch get into your colliery from the main line of the Lehigh Valley Railroad?—A. They had a branch that went up to Harvey's Lake, and it was nearly as near to it as the Delaware, Lackawanna and Western was, but the coal had to go up to Coxton to be assembled and shipped.

Q. The Lehigh Valley branch, which went down to Harvey's Lake, went near the Mount Lookout colliery?—A. Yes, sir.

Q. On which side of the colliery, west or east?—A. West.

Q. Then it was west of the Delaware, Lackawanna and Western Railroad?—A. Yes, sir.

Q. How far away from it?—A. Probably 500 feet.

Q. That was a branch which led from Coxton to some of their coal companies, was it not?—A. Yes, sir; the Mockley and other companies.

Q. That Mount Lookout operation was a very expensive one to open and develop, was it not?—A. Very.

Q. Why?—A. It was 120 feet down to the rock, and there was water and quicksand to overcome; and several people tried to open it and did not succeed.

Q. You had to sink your shaft, then, through quicksand over 100 feet?—A. Yes.

Q. Can you now recall the expense it was to your company in sinking the main shaft and the air shaft?—A. I think upward of $200,000.

Q. Just to get down to the vein?—A. Down to the rock.

Q. Then you had to go how far farther down to the vein?—A. About 200 feet.

Q. You had leases for the coal from that property from the Schooley heirs, did you not?—A. Yes, sir.

Q. What heirs?—A. I suppose we had 100 leases. We leased from all the people in Wyoming that owned the lots, you know. We got about 600 acres altogether. Schooley had only about 150 acres, as I remember; something like that.

Q. Do you recall whether The Lehigh Valley Coal Company did not have an option on that Schooley lease at the time that you acquired it for the Mount Lookout?—A. I do not think they did.

Q. You do not remember that fact?—A. No.

Q. The coal which you manufactured at the Mount Lookout operation you sold how?—A. Sold it through Williams & Peters, commission men here in New York.

Q. It was transported by what lines of railroad?—A. The Lehigh Valley and Delaware, Lackawanna and Western.

Q. Did you make contracts with the Lehigh Valley Company or with the Delaware, Lackawanna and Western Railroad Company at that colliery prior to the sale of your stock in that colliery to The Temple Iron Company?—A. Made a contract with the Lehigh Valley at 60 per cent.

Q. For all the tonnage?—A. No; we had the privilege of selling to the Delaware, Lackawanna and Western, some of it, but they did not make any contract. They took it on the 60 per cent basis.

Q. In other words, you sold it voluntarily to The Lehigh Valley Coal Company upon the basis of 60 per cent of the tide water price without a written contract?—A. No; with the Lehigh Valley we had a written contract; with the Delaware, Lackawanna and Western we

did not, but we sold it voluntarily to them at 60 per cent without any contract.

Q. The next colliery in which you acquired an interest was the Babylon, was it not?—A. Yes, sir.

Q. That was several miles from the situation of the Mount Lookout property?—A. About 6 miles away; yes, sir.

Q. At Duryea, as I have already asked you?—A. At Duryea.

Q. From whom did you lease your coal that you mined at the Babylon?—A. The Lehigh Valley Coal Company.

Q. Was it not provided in that lease that you should ship the coal by the Lehigh Valley Railroad?—A. Yes, sir.

Q. That operation you formed under a charter known as the Babylon Coal Company, did you not?—A. Yes, sir.

Q. And you and Mr. Watkins and other gentlemen owned all the stock of that company, the Babylon Coal Company?—A. You mean Mr. Watkins and I and other gentlemen?

Q. And others, I said; you and Mr. Watkins and others owned the stock of the Babylon Coal Company?—A. Yes, sir.

Q. The next coal company which you bought into, prior to the sale to The Temple Iron Company, was which one?—A. The Forty-Fort; we leased it from the Wyoming Valley Coal Company; we called it the Forty-Fort.

Q. In other words, you acquired the collieries at Forty-Fort, known as Forty-Fort and Harry E?—A. Yes, sir.

Q. That you acquired by the organization of what is known as the Forty-Fort Coal Company?—A. Yes, sir.

Q. You leased from the Wyoming Valley Coal Comapny?—A. Yes, sir.

Q. The Wyoming Valley Coal Company was controlled, was it not, oy The Lehigh Valley Coal Company?—A. Yes, sir.

Q. Those properties are in the Wyoming Valley?—A. Yes, sir.

Q. How far south of the Mount Lookout Coal Company's operation?—A. About 4 miles.

Q. There were two collieries?—A. The Harry E and the Forty-Fort.

Q. How did you dispose of the coal which you mined at the Forty-Fort and the Harry E breakers?—A. I think Williams & Peters handled it for a little while, but we finally sold it to The Lehigh Valley Coal Company on a 60 per cent basis.

Q. While Williams & Peters handled it, it was shipped by the Lehigh Valley Railroad, was it not?—A. Yes, sir.

Q. Afterwards, your recollection is, you made a contract with The Lehigh Valley Coal Company for the disposition of that coal?—A. Yes, sir.

Q. When you speak, as you have this afternoon, of selling the coal to the railroad companies, you mean to say, do you not, that you sold the coal to the coal companies, which were in turn controlled by the railroad companies?—A. Yes, sir.

Q. The next operation that you acquired was what one? The next was Sterrick Creek, was it not?—A. I do not know whether I bought the Lackawanna before that or not. I think I bought the interest in the Lackawanna first.

Q. You acquired a one-fifth interest in the Lackawanna Coal Company (Limited), did you not?—A. Yes, sir.

Q. Therefore you held a minority interest in that limited copartnership?—A. Yes, sir.

Q. You had nothing whatever to do with the management of it?—A. No; we were not even elected.

Q. At the time you made the deal with The Temple Iron Company, however, you secured options on three other interests in the Lackawanna Coal Company (Limited), did you not?—A. Yes, sir.

Q. And you agreed to turn over to The Temple Iron Company a four fifths interest in the Lackawanna Coal Company (Limited) upon an agreed price?—A. Yes, sir.

Q. The Lackawanna Coal Company (Limited) was situated where; its colliery?—A. Olyphant.

Q. That is 7 or 8 miles north of Scranton, is it not?—A. Yes, sir.

Q. Now we come to Sterrick Creek. Do you remember acquiring the control of the Sterrick Creek Coal Company?—A. Yes, sir.

Q. Do you remember how long a time that was prior to your transfer of the stocks of these various companies to The Temple Iron Company?—A. I do not.

Q. It was shortly prior, was it not?—A. Yes.

Q. That property had the same location as the old Grassy Island, to which you have referred, in Peckville; that is right, is it not?—A. Yes, sir.

Q. At the time you acquired your interest in that, do you know how it was disposing of its coal?—A. I do not.

Q. You do not remember?—A. I do not.

Q. You and Mr. Watkins together had also control of what was known as the Wyoming Land Company, did you not?—A. Yes, sir.

Q. That was a corporation of the State of Pennsylvania?—A. Yes, sir.

Q. And owned certain lands?—A. Yes, sir.

Q. In the vicinity of what colliery operation?—A. Forty Fort.

Q. Was it not the Mount Lookout?—A. The Wyoming Land Company?

Q. Yes.—A. I thought you were referring to some surface land we bought down at Forty Fort. We bought some coal lands from the Pennsylvania Coal Company. If it was known as the Wyoming Land Company, I have forgotten, but I suppose that is right.

Q. I call your attention to an agreement, or a copy of it, attached to our answer, which recites the various companies the stocks of which you transferred to The Temple Iron Company, and among them is designated as "C," the Wyoming Land Company. Will you please tell me what that company was which was included in

the purchase by The Temple Iron Company of your properties?—A. I do not remember.

Q. You know there was such a company?—A. I had forgotten it.

Q. I will call your attention next, to the Wyoming Electric Light Company, which is another company which you turned over?—A. I remember that; yes.

Q. You remember that there was such a corporation as the Wyoming Electric Light Company, which you and Mr. Watkins controlled, do you not?—A. Presumably; yes, sir.

Q. And you remember that it had a business in the vicinity of the Mount Lookout colliery, do you not?—A. And Wyoming.

Q. And the village of Wyoming?—A. Yes, sir.

Q. I call your attention to another company that was included in the transfer to The Temple Iron Company, which is designated as "H" here in the list of the companies, the Hendrick Land Company. Do you recall that corporation?—A. Yes, sir.

Q. That you and Mr. Watkins assumed by this contract to transfer to The Temple Iron Company, did you not?—A. Yes, sir.

Q. That company's lands were where?—A. They were in connection with Edgerton, but a couple of miles away.

Q. In the vicinity of the Edgerton operation?—A. Yes, sir; the coal from them went to the Edgerton.

Q. You have said that you can not recall when the practice began of operators in our northern field selling to the railroad coal companies, as we call them, that is to say, to the coal companies controlled by the railroads, their coal upon an agreed basis of a per cent of the tide-water price. Did you not say that in your examination in chief, that you could not recall when the practice commenced?—A. I can recall when I made the deal with Mr. McLeod.

Q. But answer my question; did you not say, in your direct examination, when the government counsel asked you, that you could not tell when that practice commenced? Do you not remember saying that?—A. What practice do you mean?

Q. As I have said in my question, the practice of the individual coal companies selling their coal to the railroad coal companies, so called, upon an agreed price?—A. It was not any general time, don't you know. Some people sold at one time and some people sold at another, but on Washington's birthday, 1892, Mr. McLeod, representing the Lehigh Valley and the Jersey Central Railroads, agreed to give us 60 per cent, and then we turned everything we had in to them. That is what we wanted.

Q. But prior to that, for many years——A. We made a deal whenever we could, sometimes 50 per cent, sometimes 55, and sometimes we sold our own coal.

Q. Prior to that for many years you know of coal companies, individuals in our section, selling their coal to the railroad coal companies upon an agreed price, which represented a certain percentage of the tide-water price, do you not?—A. Yes; other people did it and we did it.

Q. Can you recall, going back prior to this McLeod deal, the furthest number of years that you can recall any of the individual operators selling to any of the railroad coal companies on any such basis? I care not what the per cent was, but upon some per cent.—A. I could not fix the date.

Q. You know, do you not, that it went back as far as 1881?—A. Further than that.

Q. The Simpson & Watkins stores and the business which the firm did, all the business which the firm ever did as a firm, did not enter into the negotiations and were not made a part of the deal represented by the transfer to The Temple Iron Company, were they?—A. No.

Q. Then you had acquired, you and Mr. Watkins, and others, interests in 8 collieries prior to January 1, 1899, had you not?—A. Yes.

Q. Of 7 you and Mr. Watkins and your associates owned the entirety of the capital stock, and in one you had only a one-fifth interest, but options upon three other fifths interest in it?—A. Yes, sir.

Q. There were certain bonds, were there not, which certain of those companies had outstanding, which you had issued?—A. Yes, sir.

Q. Can you tell us what companies there were that you had issued bonds upon and sold to outsiders?—A. The Forty Fort, Mount Lookout, and Babylon.

Q. Can you tell us the amount of the outstanding obligations of those companies in the way of bonds at the time of the transfer of these properties to The Temple Iron Company?—A. I can not.

Q. They aggregated over $100,000 at least, did they not?—A. Yes, a good deal more.

Q. The exact figures appear in the contract to which I have called your attention, do they not?—A. Yes.

Q. Mr. Bacon, the gentleman you have been asked about, is now the First Assistant Secretary of State of this country, is he not? That is the gentleman, is it not?—A. By rumor, I think that is so.

Q. Do you or do you not know that a member of the firm of J. P. Morgan & Co., was a member of the executive committee of the Erie Railroad at that time—Mr. Coster, I think his name was.—A. I do not know it.

Q. The gentlemen whom you met with Mr. Bacon at Mr. Twombly's office you have said, at least as to some of them, were interested in the Central Railroad of New Jersey and the Erie Railroad, Mr. Thomas and Mr. Maxwell?—A. Yes, sir.

Q. Do you know whether that conference, if you call it that, was the opening gun of the negotiations looking to the transfer of the stocks of these various corporations which you and Mr. Watkins controlled to The Temple Iron Company, or whether there had been previous negotiations by your partner?—A. There had not been any negotiations with me.

Q. But do you know whether there had been any previous negotiations?—A. I do not.

Q. You do not know as to that?—A. No.

Q. You fixed a figure to those gentlemen, at which you would undertake, you and Mr. Watkins, I assume, jointly, to acquire all the capital stock of all these companies, also the capital stock of the other three companies to which I have called your attention, the Wyoming Land Company, the Wyoming Electric Light Company, and the Hendrick Land Company, and transfer the properties as of the 1st of January, 1899, did you not?—A. Yes, sir.

Q. That is to say, the deal involved, although the papers were not executed, the contracts made, or the money, stocks, and bonds, paid to you until the latter part of February, 1899, the transaction was to be as of January 1 of that year?—A. Yes, sir.

Q. Can you tell what the total sums of money and the total amounts of bonds and the total amounts of stocks which you received from the Guaranty Trust Company, who were the parties with whom you dealt at the close of the transaction, were?—A. What we were to get?

Q. Do you remember what you got?—A. $5,000,000.

Q. You do not mean that you got $5,000,000 in cash?—A. No; part bonds.

Q. Do you know what the issue of bonds was that you got?—A. I do not remember.

Q. You do not remember the aggregate?—A. No.

Q. Do you remember the amount of cash which you got, the aggregate?—A. A pretty big check, I think about two and a quarter millions cash; but I do not remember.

Q. Do you remember the amount of stock you got?—A. No, sir.

Q. Did you get stock issued to the names of yourself and Mr. Watkins, or did you get certificates of beneficial interests, in The Temple Iron Company, or can you not remember that?—A. I do not remember what I got, but what I got I thought was good.

Q. In your opinion were the properties which you agreed by this contract, to which I have called your attention, to transfer, to wit, all of the capital stock of these 7 coal companies, four-fifths of the interest of the Lackawanna Coal Company (Limited), and all the capital stock of the three companies that I have named, not coal companies, a fair consideration for the property, or did they buy from you, as is alleged here, in the Government complaint, at a high and exorbitant price these properties?—A. They had it nine years and made a lot of money, and I guess all it cost them; and I will take it back to-morrow at the price I sold it for.

Q. Which means what, translated?—A. Which means we sold them too cheap.

Q. In other words, they were at least worth then, as a commercial proposition, the consideration paid by the purchasers?—A. A good deal more.

Q. In other words, in your opinion, they got a bargain, as you said?—A. That is why I think they bought it. They never dreamed we had 40,000,000 tons of coal in the ground.

Q. You told them you did?—A. I told them, and that is what woke them up to it. We had simply started a colliery here and there, and they thought we were short lived, and I said, "We have got 40,000,000 tons of coal in the ground." The Erie Railroad paid $28,000,000 for the Pennsylvania Coal Company, with only 80,000,000 tons.

Q. Was not that a good purchase?—A. I had an option on it at $20,000,000 ten years before.

Q. What I want to know is, was not that a good purchase in your judgement, as a commercial proposition?—A. I think so, yes, but I am a bull on anthracite properties, you know.

Q. Just to make this perfectly clear in the record, when you speak, as you did in your examination in chief, of selling a part of the output of these collieries at different times to the railroads and some you sold yourselves, you mean that you sold part of the output to the railroad companies and part you sold yourselves, do you not? The form of the contracts, in other words, were with the coal companies, were they not?—A. I do not think always. For instance, the Delaware, Lackawanna and Western Railroad had no coal company.

Q. We will except the Delaware, Lackawanna and Western.—A. It was always made with The Lehigh Valley Coal Company.

Q. And the Hillside Coal Company and The Lehigh and Wilkes-Barre Coal Company?—A. Yes, sir.

Q. You have said that there is a practice in our region, well known, by which the railroads interchange traffic at a lateral charge of 15 cents; do you remember saying that?—A. Per ton, yes.

Q. Is not this a fact, that for some of the collieries it is 15 cents and for some it is 20 and for some it is 25, in other words, that it is not uniform throughout our valley?—A. I do not know about that.

Q. Do you not know that for points south of Scranton, for instance, assuming you undertook to deliver coal, wanted to deliver coal to the Lehigh Valley Railroad at Avoca from Edgerton, that the charge of the delivering road, the gathering road from Edgerton colliery to Avoca, is fixed and always has been fixed, at 20 cents?—A. The only time I ever knew it to be hauled down there, they charged 40 cents.

Q. Do you not know, also that, as between colliery operations and other roads not connected with the colliery by spur lines or switch lines, that there are charges of 25 cents established as the regular fixed price?—A. I guess I made that too broad. I know that the Lehigh Valley and the Pennsylvania charged 15 cents.

Q. What you mean by saying your answer was too broad, you mean you were too broad in saying it was 15 cents always?—A. The Lehigh Valley and the Pennsylvania had that arrangement. Any coal that was not on their line and was on the other lines, they charged

at 15 cents. I know there was a gathering charge then between the Erie and the Delaware and Hudson companies and when we wanted to ship coal, when Coxe Brothers had a strike, it cost us 40 cents to take it down from Edgerton.

Q. To strike the road that you wanted to consign it to at what point—what haul was it that they charged you 40 cents a ton for?—A. From Edgerton colliery down to Wilkes-Barre.

Q. Which is how far?—A. About 25 miles.

Q. So that an individual shipper undertaking to sell coal himself, if he undertook to arrange to have it shipped by a road which had no connection with the colliery, would have to pay the freight rate which that road charged from the point where his coal could get to that road, plus the lateral charge on some other road from the colliery to that point?—A. Yes, the other road would not distribute it.

Q. By the by, in connection with the purchase of the properties by The Temple Iron Company, and some time prior to that time, do you recall knowing of an alleged projected road under the name of the New York, Wyoming and Western?—A. I do.

Q. You remember that you were a subscriber to the articles of association, or connected with the organization of that road?—A. I think I was.

Q. For 250 shares, was it not?—A. For a very small amount, I hope.

Q. I show you a certified copy of the articles of association. Refreshing your recollection from that, is it not correct to say that is the amount you subscribed for, 250 shares?—A. Yes, sir.

Q. Out of a total of 10,000 shares?—A. Yes, sir.

Q. That road, in accordance with the certified copy of the articles which I have in my hand, was chartered to construct a railroad from a point on the Susquehanna River within or near Pittston, in Luzerne County, Pa., to a point on the Delaware River in Northampton County, Pa., being also on the boundary line between the States of New Jersey and Pennsylvania, opposite or near Belvidere, N. J. In your opinion was that a feasible proposition, to build that road between those two points?—A. Do I think that was a paying proposition?

Q. Yes.—A. I never did think so.

Q. Did you ever have any faith in the construction of that road?—A. No, sir.

Q. Did you ever believe it was going to be built?—A. No.

Q. I understood you to say that you thought it was for the interests of the independents, so called, to sell their coal to the railroad coal companies upon an agreed basis of purchase rather than to undertake to sell it in the open market themselves. I am correct in understanding you to say that, am I not?—A. Yes.

Q. I understand you further to say that the West End Colliery Company, with which you are now connected as an important factor, are you not?—A. Yes, sir.

Q. You own a large proportion of its stock, do you not?—A. Yes, sir.

Q. The West End Colliery Company is to-day selling to The Lehigh and Wilkes-Barre Coal Company a portion of its output upon a written 65 per cent contract and a part to the Susquehanna Coal Company upon the same basis, but without any contract at all; is not that right?—A. Yes, sir.

Q. That colliery is situated where?—A. Opposite Shickshinny, in Luzerne County.

Q. It is across the river from Shickshinny, in other words, is it not?—A. Yes, sir.

Q. It is a pretty large operation; that is to say, it has two collieries; has it not?—A. No; it is a large shipping operation.

Q. You and your friends control it, do you not?—A. Yes, sir.

Q. Why do you sell a part of the tonnage to the Susquehanna Coal Company by verbal arrangement, but upon the 65 per cent basis, rather than to undertake to sell in the open market? Please give us your reasons, in other words, for your belief that it is advantageous to the shipper to have the larger coal companies handle the coal.—A. There are two reasons—there are half a dozen, I suppose. When the coal goes through the scales and is inspected, that ends our liability. They pay us the cash for it soon after the first of the month. If we sold it ourselves we would run the risk of the commercial transaction, and we would have to carry some people that had yards and wanted to store the coal through the summer, when it can not be used. It has to be used in the winter time, you know, and we prefer to take our money from the company in quick cash than to run the commercial risk.

Q. Is it not your judgment, therefore, that the individual operator, take it through the entire year, is in a better situation, financially speaking, to dispose of the coal in that way, though he is free in the matter of contract obligation, than to undertake to sell it himself in the open market?—A. Yes; you have got so much less work.

Q. And less risk?—A. Less risk. You know this anthracite coal is a domestic fuel. It is not like soft coal. They only use it five or six months and to get a man to put it in his cellar and the dealer to carry it, you have got to give them some inducement. I always have worked for that, to have the railroad people do that for us.

Q. In other words, you have worked to have the railroad people do what The Philadelphia and Reading Coal and Iron Company does in New York to-day, for instance, advance the price upon the coal which it sells here 10 cents a ton, starting with May, through the summer?—A. You have got to make an inducement for them to take it, haven't you? If a man has got a cellar full of coal, has got all he wants, he is not going to put it in the parlor, you know, because it is cheap. So you have got to get him to store this coal for use during the time that he does not want to use it, and we can not mine it for him. You can not mine all this coal in five or six months. It has to distributed through a year.

Q. What beneficial effect has that upon the matter of the steady employment of labor in our section at the mines?—A. You could not get the men to work five months a year, they would not stay with you. You have got to give them steady employment, and you have got to pay somebody to take this coal when you do not want it.

Q. By giving him a lower figure?—A. A lower figure.

Q. As an inducement to buy at that time?—A. Yes; now the individual operator is not strong enough to do that, any way.

Q. The result then of the independent undertaking to sell in the open market is what, so far as its effect upon the region generally as to the steady employment of wages and the prices, take it through the year, the general outcome at the end of the year?—A. Of course, you know this I suppose, that the individual operator is the highest priced fellow in the world, when they want the coal, and if you left it to five months he would want to get $20 a ton for it. He would not have any confidence. You can not mine it in five months or six months. You have got to take the whole year to mine it, and you have got to get somebody to take this coal in and pay him for doing it.

Q. Were you an individual operator when work resumed after our great strike of 1902?—A. Yes.

Q. Did you have anything to do with fixing the prices which you individual operators exacted of the public at that time?—A. Yes.

Q. Do you recall that Mr. Baer, so far as The Philadelphia and Reading Coal and Iron Company was concerned fixed the price at which his company's coal was to be sold, at not to exceed $5 a ton?—A. Yes, sir.

Q. Notwithstanding the fact that the country was, as you might say, starving for coal?—A. Yes; I had quite a controversy with him about it. I said, "You are paying us 65 per cent of the price at tide. Now, it is not fair for you to say that $5 is enough. We can get $10." "Well," he said, "don't you want to take care of the poor?" I said, "All right, you take care of the poor and I will take care of the rich," and he finally allowed us to sell our own coal for two or three months.

Q. The railroad companies, although they controlled the coal of such independents as were then under contract with them, upon the basis of 65 per cent, for two or three months there allowed you to sell the coal yourself and get anything you could for it?—A. We got $20 a ton for some of it.

Q. Did not The Lehigh and Wilkes-Barre Coal Company at that time have a 65 per cent written contract with the West End Colliery Company, with which you were associated?—A. Yes, sir.

Q. And did that Lehigh and Wilkes-Barre Coal Company, with whom you were under contract obligations to sell the coal at 65 per cent of the tide-water price, release you from your contract obligations for the two or three months' period you have spoken of and allow you to sell the coal as you have already said?—A. Yes, sir.

Q. You said to Mr. McReynolds that you got $6,000,000 of stock. You afterward explained that; but I want to clear it up on the record. You do not mean that you can give us the exact figures so as to say it was just exactly $6,000,000; that that was the consideration of the acquisition by The Temple Iron Company?—A. We got $5,000,000; but we turned back some working capital and discount on some of the bonds payable for The Temple Iron Company's charter, so we netted $5,000,000.

Q. You also agreed to protect The Temple Iron Company, after it had acquired your properties, as to certain litigation that was pending against the Lackawanna Coal Company, do you not remember, and gave a bond?—A. Yes, sir; gave them a clear record.

Q. And also to protect them against the bond issues of the Babylon, the Mount Lookout, and the Forty Fort Coal Companies?—A. Yes, sir.

Q. The only way the Central Railroad of New Jersey could have taken the coal from Edgerton, for instance—and you referred to this in answer to a question Mr. McReynolds asked you—was to enter into some traffic agreement with some of the roads running north of Scranton, by which they would get the coal, the Jersey Central, at some point considerably below Scranton; is not that true?—A. Yes, sir.

Q. And is it not true that they do not reach into Scranton except in this way; they have a little road which strikes the Delaware and Hudson a few miles south of Scranton, at Minooka, and they built from Minooka into Scranton at Lackawanna avenue, where their passenger station is?—A. Yes, sir.

Q. Then they run on the Delaware and Hudson road, for their passengers, and I presume freight also, to Wilkes-Barre, do they not?—A. Minooka to Mill Creek.

Q. Which is only a mile or two north of Wilkes-Barre?—A. Yes, sir.

Q. So that the Central Railroad of New Jersey would not be in a position to take any tonnage from collieries north of Scranton except by a haul of at least 14 miles from Mill Creek to Scranton, and as many miles north of Scranton as the colliery happened to be; is not that right?—A. Yes, sir.

(At 4.30 p. m. adjourned until 10.30 a. m., Friday, December 4, 1908.)

Met pursuant to adjournment at New York, Friday, December 4, 1908.

Present: the Examiner, and Messrs. McReynolds, Todd, Campbell, Warren, Moot, and Opdyke.

Cross-examination of Clarence D. Simpson resumed by Major WARREN:

Q. Can you give me any approximation of the cost of the opening and developing of the mines, colliery by colliery, that were finally

acquired under these various corporations, and sold in 1898 to The Temple Iron Company?—A. I could not tell you approximately; no.

Q. Can you tell me within a range within which it would be fair to say the cost would be represented in the construction and opening of the colliery?—A. I think I remember about the Babylon, one of them, that cost about $250,000. The Mount Lookout cost a great deal more, but I do not remember how much.

Q. Would that represent the cost of construction of the colliery and the buildings, and also of the sinking of the shafts and the developing of the gangways and the opening of the interior workings to the point where you could mine coal at a profit?—A. It would not include any gangways. That would be the shaft and the buildings, the breaker and machinery.

Q. There is an item, and a considerable one, is there not, which represents the cost of the interior development of a mine in the first instance, which you speak of as dead work, or company work?—A. Yes, sir; development.

Q. That is a large item of expense, is it not?—A. Oh, yes; very expensive.

Q. At the time you acquired the lease of the Babylon, do you remember what you agreed to with the representatives of The Lehigh Valley Coal Company as to the tonnage from the Mount Lookout?—A. We agreed to give the Lehigh Valley Railroad as much tonnage each year as we mined from the Babylon, which was their land.

Q. The Babylon having been leased, so far as its lands were concerned, from The Lehigh Valley Coal Company?—A. We leased it from The Lehigh Valley Coal Company.

Q. You spoke yesterday afternoon, in answer to a question by the counsel for the Government, about the necessity for securing a larger price for coal due to certain things, and you mentioned the fact that you were in these latter years mining the thinner veins, which added very materially to the cost of the preparation and manufacture of coal. I would like to have you give me a little more in detail, if you will, the things which in these latter days enter into and constitute the larger expense in mining anthracite coal.—A. We used to have veins that were above water level. Now we have to sink for all of them and pump the water and hoist the coal, and those veins carry more impurities than the ones that were above water level and where the coal was more easily gotten out; and the expense of the breaker to manufacture the different sizes that are made now is much more than it used to be.

Q. How about the cost which enters into the construction of the breaker; take lumber itself, for instance?—A. That is worth twice as much as it used to be. The main point is, we used to make a lot of lump coal.

Q. How about the equipment of the breaker in the way of machinery and appliances as compared with the cost of the breakers fifteen or twenty years ago?—A. It takes a great deal more machinery.

Q. Can you approximate in figures as to how much more it costs to construct a breaker for modern preparation as compared with that of fifteen years ago, say?—A. It costs four or five times as much to build a breaker now as it used to cost twenty years ago.

Q. In connection with the inside development of a mine, in view of the fact that you are working these thinner veins, can you give us some idea of what that calls for in the way of dead work in taking down top roof, for instance, and the other matters which are involved, and in the driving of gangways and opening chambers in these thinner veins, and the props, and all the various things?—A. I think it would add 25 per cent to the cost.

Q. What about the waste to-day as compared with the waste when you were mining from the better and thicker and less expensive veins to mine, so far as the work was concerned—how about the waste in the matter of the stuff that has got to be got out of the mine and is of no earthly use so far as market conditions are concerned?—A. I do not quite understand what you want to know. You have got to bring out the impurities in the veins.

Q. State whether there is not a very considerable increase in the material that has to be removed from the veins in the solid in order to get the coal from the thinner veins.—A. If the vein carries impurities it has got to be sorted and moved, and these lower veins do carry more impurities than these Pittston big veins we used to consider such good ones.

Q. Suppose we take a vein that in itself does not carry more impurities, but is not sufficiently high as to give you headroom; what do you have to do in that case?—A. You have to blast rock.

Q. Is not that expensive?—A. Yes, sir.

Q. Do you not have to take down rock that is dead work, which has to be taken out of the way and out of the mine and deposited somewhere?—A. Yes, sir. You have got to pay a miner for doing it.

Q. Does not that add materially to the cost of the mining of veins of the character to which you have referred?—A. If you have to take down the rock, it adds very much to the expense.

Q. How about the labor cost in the last ten or fifteen years? What proportion would you say has been added?—A. I think about 25 per cent.

Q. How about the efficiency of labor as compared with that of ten or fifteen years ago?—A. I do not think they are as easy to handle as they used to be.

Q. Can you now get as much work out of them? Are they as efficient?—A. I do not know. We only work nine hours a day now. We used to work ten hours. If you go by the hour, I do not know that there is much difference.

Q. I mean during the hours which they labor, do they accomplish as much as they used to do in the days, say ten or fifteen years ago?—A. I do not think there is much difference.

Q. In view of these various items which you have referred to, and which add to the expenses and fixed charges and cost of mining

and manufacturing coal, what is your opinion, or what have you to say as to the reasonablness or otherwise of the present price of anthracite coal, say at tide?—A. I think the price is low enough.

Q. That is another way of saying that it is a reasonable price at this present figure, at least?—A. I think so.

Q. Do you know what capital is required for a person to open and develop a mine under average conditions, and having it developed and opened and the breaker constructed and in shape for sale of coal, to undertake to handle it independently, selling the coal of the operator himself in the market?—A. If he furnished the capital to sell it?

Q. I mean the working capital necessary to try to economically and satisfactorily dispose of his own coal?—A. Of course that depends a great deal on how much he mines per day. But a man who tried to sell his own coal and furnish stock when it was not salable would lock up a great big lot of money.

Q. Is it, from a financial point of view, desirable, in your judgment, for a man who owns an individual operation, to undertake to handle his own coal?—A. I do not think so.

Q. The advantages are rather, as you said yesterday, for him to dispose of the coal to the railroad coal company, so-called, with larger capital, for the purpose of stocking and handling and arranging to sell the coal during the summer months and the various matters you called our attention to yesterday.—A. My experience is that I would rather sell to the company, as we are selling now, than to try to market my own coal, if I had plenty of money to market it with.

Q. It would be to your financial advantage, as an operator to do business in that way?—A. Yes, sir.

Q. Do you recall whether at the time you negotiated the deal with Mr. McLeod, to which you referred yesterday, he allowed the 60 per cent contract to individual operators other than those with which you were associated, who at that time had pending and existing contracts at a less basis of compensation, 55, or some figure less than 60 per cent of the tide water price?—A. He treated them all alike; gave them all 60 per cent.

Q. Did he do that in cases in your knowledge where there was a pending and existing contract at a figure less than 60 per cent?—A. Yes, sir.

Redirect examination by Mr. McREYNOLDS:

Q. Have you been asked during this cross-examination the names of the boys at every breaker with which you have been connected during your experience as an operator?—A. I have not been asked that question.

Q. There were boys at those breakers?—A. Yes, sir.

Q. They had names?—A. Yes, sir.

Q. Do you not recollect their names?—A. No, sir.

Q. How does that happen?—A. I do not know why I should know their names.

Q. Do you know what you paid those boys?—A. No, sir.

Q. Did the price you paid the boys effect the price of the production of the coal?—A. To a certain extent, yes.

Q. Do you know how many mules you had in those mines?—A. No, sir.

Q. Do you know what those mules cost?—A. No.

Q. The cost of those mules affected the production of the coal, the price?—A. Yes, sir.

Q. Is it not true that there is a marked difference in the price of the production of the coal in different collieries?—A. Yes, sir.

Q. Is it not true that in some collieries it cost perhaps as much as 50 cents or more per ton to get out the coal more than it cost to get it out in other collieries?—A. Yes, sir.

Q. As the workings go deeper into the ground, it cost more to get out the coal, I presume?—A. Yes, sir.

Q. The cost of mining depends upon a great many different elements, of course, such as the cost of lease, the cost of the royalties, the amount of water, the amount of rock, and the price of labor—all those things have to be figured in to determine your cost?—A. Yes, sir. A good vein makes good mining.

Q. If you have a good vein, you can get it out cheaper than if you have a bad vein?—A. Yes, sir.

Q. If you get it out cheaper, you can afford to sell it cheaper and make money?—A. I wouldn't like to.

Q. That was not the question. You can afford to, if you get it out cheaper, sell it cheaper than if you get it out at a high price, could you not?—A. I would hate to.

Q. In which one of the regions of the anthracite district is the mining, speaking generally, most expensive?—A. I think the Schuylkill region. I am not practical in that region, though. I never mined in that region.

Q. Do you know how much was paid to promoters of The Temple Iron Company for getting it up?—A. I do not think they got anything. I do not remember that they did.

Q. It was a pure matter of gratuity?—A. A pure matter of securities. I do not think there was any underwriting. If there was I did not know it. I did not get any share of it.

Q. Were you one of the promoters of The Temple Iron Company, or were you one of the people who sold to The Temple Iron Company?—A. We sold to them, but we took the securities.

Q. Do you know how many of those securities went to the people who did the promoting matter?—A. No.

Q. In the distribution of cars to the various collieries since you have been connected with the anthracite coal mining business, who has determined upon that question?—A. In the different railroads?

Q. Yes.—A. The superintendents.

Q. The superintendent of each road determined what cars should be appropriated; how many should go to each colliery?—A. Yes, sir.

Q. That is a matter within his control?—A. Yes, sir.

Q. Prior to the time that you and Mr. Watkins sold out the collieries which you controlled to The Temple Iron Company, were those collieries run on full time?—A. No, sir.

Q. What determined the number of days during which they were run?—A. The car supply.

Q. Do you mean by that that your operation depended on how many cars you could get?—A. Yes, sir.

Q. If you could get more cars you could run more, and if you could get less cars, you had to run less time?—A. Yes, sir.

Q. And whether you could get more or less cars depended upon whether the superintendent had them, or, if he had them, whether he would assign them to you? Is that right?—A. If he had them we got them.

Q. If he did not have them you did not get them?—A. Then we could not say anything.

Q. How was it determined how many cars should come to you, and how many should go to your competitors?—A. They rated the collieries by their capacity.

Q. Explain in detail what you mean by that.—A. If a colliery had a capacity of 1,000 tons a day, when cars were plenty we got that many cars, and that determined whether we could load them or not. Some man might claim he could load 1,200, but if he could not, if he could only load 1,000, that would rate his colliery.

Q. The cars were assigned you according to the rating of the colliery?—A. When they had plenty of cars they would give us all we wanted. The place would be full of empty cars.

Q. When you could not get cars you could not run?—A. No, sir; not long.

Q. When you were operating independently and selling the coal in the market on your own account, did you fix the price for yourself?—A. Yes, sir.

Q. And with whom were you in competition in the markets in New York City and in other parts of New York State when you were selling coals on your own account?—A. Everybody that was in the business.

Q. Give us some of the leading competitors at that time?—A. The Delaware, Lackawanna and Western Railroad Company, The Lehigh Valley Railroad Company, and the Ontario and Western Railroad Company through Dickson & Eddy, their sales agents.

Q. Your principal competitors then were either the anthracite coal-carrying roads, operating in their own name, or operating through coal companies which they controlled?—A. The individual operators, too, were competitors, and the worst which we had, too, I guess.

Q. Your principal competitors I asked you?—A. You mean the biggest tonnage people?

Q. Yes.—A. Of course, they had more tonnage than the individuals.

Q. Your competitors were other individual operators, but principally the anthracite coal-carrying roads, or the coal companies which such roads controlled?—A. Yes, sir.

Q. What was your principal market while you were operating independently and selling in your own independent way?—A. New York was the principal market.

Q. New York City?—A. Yes.

Q. What is now the principal market for the coal in which the coals of The Temple Iron Company are sold?—A. New York is the largest market.

Q. The coals sold now by The Temple Iron Company are the coals which come from the collieries originally controlled by you and Mr. Watkins?—A. Yes, sir.

Recross-examination by Mr. WARREN:

Q. Do you know where the coal which is now being mined from the property formerly controlled by you and Mr. Watkins, now owned by The Temple Iron Company, is sold?—A. No, sir.

Q. I neglected to ask you about the increased cost of the preparation of coal in the breaker due to the market demand for sizes other than the demands called for in the earlier years. You spoke incidentally about making, in the early years, a large proportion of lump. In what way, if any, has the present market demand increased the cost of preparation of coal, of the manufacture of the raw material in the breaker?—A. When we used to make lump coal and broken coal, perhaps 30 or 40 per cent of the product was those sizes that did not require any machinery, simply going over the bars. Now, probably, 40 per cent of our output is of the very small sizes requiring jigs and screens to break and separate it, and for which we do not get what it cost per ton to mine it. It is a sort of a by-product.

Q. What are jigs?—A. They are something to separate the coal from the slate and size it. Water is used with it, and it is washed to get the dirt out of it.

Q. The breakers nowadays have to be equipped with this machinery known as a jig?—A. Either a jig or small mesh screen, lots of them. There is a great deal more machinery in a breaker now than there used to be.

Q. How about the waste created by the manufacture of this much larger proportion of sizes below lump and broken, as compared with the waste in the earlier methods of mining?—A. Every time you break the coal it wastes. You have to break it down to these small sizes.

Q. Did you ever have occasion to ascertain the recognized per cent of that waste in preparing coal to a given size of rolls?—A. We used to make those experiments, but I do not remember what they were. I know the loss is very large in breaking up anthracite coal.

Q. To meet the present market conditions?—A. Yes, sir.

Q. As compared with the past?—A. Yes, sir.

EDWARD S. FULLER, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Where is your home, and what is your business?—A. My home is in Scranton, Pa. I am interested in mining salt, and I am interested in railroad matters.

Q. What connection have you at any time had with the anthracite coal industry?—A. I was interested in the anthracite business from about 1880 to about 1900.

Q. State how you were interested?—A. In mining coal.

Q. Were you a mine operator during that time?—A. Yes, sir.

Q. With what collieries were you connected?—A. I had four collieries in the Wyoming region and one in the Schuylkill region.

Q. What did you do with the output of those collieries?—A. Sold it in the market.

Q. What markets?—A. The general market.

Q. Give us an idea where those coals went and how you sold them?—A. Largely in the eastern market, east of Buffalo, in the New England market and in the New York market.

Q. Did you sell it through your own individual agents?—A. At times; yes, sir. At times to the railroad companies.

Q. While you were selling through your own individual agents did you determine your own prices and sell according to them?—A. Yes, sir.

Q. When did you cease to sell through your individual agents in the markets, as you have stated?—A. From the time we commenced mining coal we sold our own coal in the markets for some years, I can not tell you exactly, and then we sold coal to the coal railroad companies, the companies controlled by the railroad companies, and then after that we sold our own coal.

Q. When did you finally cease to sell your own coal?—A. About 1900.

Q. After that time, to whom were those coals sold?—A. We sold the collieries at that time.

Q. To whom did you sell your collieries?—A. I sold one colliery to the Ontario and Western Railroad Company and the others I sold to The Lehigh Valley Coal Company.

Q. Then you retired from the business?—A. Yes, sir; from the coal business.

Q. Are those collieries still owned by the interests to which you sold them?—A. I believe they are.

Q. Do you know where the coals of those collieries now go?—A. I do not.

Q. While you were carrying on these operations, what was the inducement which led you for a part of the time to sell your coal to companies controlled by the railroads?—A. The price paid by the coal companies was increased originally from about 45 or 46 per cent of the tide-water price until it got up to about 65 per cent of tide-

water price. During that period we at times would sell our own coal, thinking we would get more money than the price offered us by the railroad companies, say, 50 or 55 per cent. After trying that for a time we found we did not.

Q. During the time you were a coal operator, these coal companies controlled by the railroads offered to buy your coal upon a percentage of the tide-water basis, varying from 45 to 65 per cent; is that correct?—A. Yes, sir.

Q. During part of the time, therefore, while you were an operator you sold on that basis to those coal companies?—A. Yes, sir.

Q. During a part of the time you thought you might get more by acting upon your own responsibility?—A. Yes, sir.

Q. But you found out that the latter assumption was wrong?—A. Yes, sir. If you will allow me to explain, perhaps I can make that a little clearer to you. The percentage paid by the railroad coal companies was based on tide water. There is what we call a line trade, which is not based on tide water; that is, the price we receive from the company is not based on the price we received along the lines—it is based on the tide-water price. Therefore, we thought possibly by catering to the line trade we might get more money for our coal than we would if we shipped it based on the tide-water price. That is why we changed.

Q. Do you know where the coals which are mined from the collieries which you once controlled are now sold?—A. I have no idea. I have been out of the coal business for six years or more.

Q. Was it the custom of all the railroad companies to offer to independent miners the same percentage of the tide-water prices for coals taken from their mines?—A. I think not. The Delaware and Hudson, for instance, bought no coal from other operators.

Q. How about the other lines who did buy?—A. I think the other lines paid practically the same percentage price for coal.

Q. From whatever colliery it came?—A. Yes, sir.

Q. And that percentage during the time you were connected with the coal trade was increased from 45 to 65 per cent?—A. It was 45 per cent before I went into the coal trade. I think when I went in it was perhaps 50 per cent. It had been 45 or 46 per cent, based on the tide-water price.

Q. The miners in the anthracite coal region are dependent upon the railroads to move their coals to market, are they not?—A. Yes, sir.

Q. There is no other practical way of getting them out?—A. No, sir; not that I know of.

Q. Did you have any acquaintance with the projected New York, Wyoming and Western Railroad?—A. Yes, sir.

Q. Did you have anything to do personally with the arrangements looking toward the construction of that road?—A. Practically none. Mainly for the reason that I had not any faith in it.

Q. Did you know the purpose intended to be subserved by that road?—A. Yes, sir.

Q. What was it?—A. To ship the coal from the operators to tide water.

Q. There were already railroads there to ship it?—A. Yes, sir.

Q. Then why this projected road?—A. I had nothing to do with the organization of that New York, Wyoming and Western, but I assume that the object was to enable the operators to receive more money for their coal.

Q. How could that enable them to receive more money for their coal?—A. I can not explain about the New York, Wyoming and Western, because I had so little to do with it. Later on I had to do with another road, and I know the object of that road. I assume that that was the same object.

Q. If the operators could get a lower rate of freight, they could get more money for their coal, could they not?—A. I do not know about that. If all the railroads should reduce freight rates, I assume that the price of coal would go down. That is a matter of conjecture.

Q. What was your connection with the Independent Anthracite Coal Operators' Association?—A. I was a member of it.

Q. What was the purpose of that organization?—A. The organization had meetings every quarter for the purpose of discussing the coal business generally, diffusing knowledge, getting ideas from the different operators as to their operations.

Q. Do you know about how many members there were?—A. I could not tell that. I should say perhaps fifty.

Q. Do you know about what proportion of all the independents that constituted?—A. Practically all.

Q. What do you mean by an independent operator?—A. I should say an independent operator was an operator who mined his own coal and had no railroad.

Q. Is there such a thing as an Independent Coal Operators' Association now?—A. That I do not know.

Q. What became of this association of which you were a member?—A. That was in force at the time I retired from the business. I do not know what has happened to it since. I have no idea.

Q. Were you chairman of the executive committee of that association?—A. No, sir.

Q. Did you have any office in it?—A. I think not; no, sir.

Q. Were you connected with the projected Delaware Valley and Kingston Railroad?—A. Yes, sir.

Q. What was the purpose of that road?—A. Their purpose was to build a line from the terminus of the Erie and Wyoming Railroad to Roundout on the Hudson River.

Q. Was this projected road backed by the Independent Operators' Association?—A. No, sir.

Q. Were they actively interested in that road?—A. No, sir.

Q. That road was not discussed and encouraged by resolutions in their meetings that you remember?—A. That road was organized by the Pennsylvania Coal Company. If that road had been built,

some of the operators, not all of them, because that road only came out from the Wyoming region, but the majority of the operators there would have shipped their coal over that road, and would have sold that coal to the Pennsylvania Coal Company. The Pennsylvania Coal Company owned the Erie and Wyoming Railroad.

Q. How would that have benefited the independent operators?—A. They would have sold their coal to the Pennsylvania Coal Company at a 65 per cent contract. The contract that they had which just expired in 1899 or 1900, was a 60 per cent contract, I think.

Q. Those contracts were about to expire?—A. Yes, sir.

Q. And they hoped by means of this independent road to get 65 per cent for their coal?—A. Yes, sir.

Q. The Pennsylvania Coal Company was bought up about that time by the Erie Railroad Company?—A. Oh, no; not at that time.

Q. When?—A. The Pennsylvania Coal Company was to pay the independent operators, some of them, 65 per cent of the tide-water price for their coal on cars at the colliery. The railroads arranged to make the 65 per cent contracts before they purchased the Pennsylvania Coal Company, practically at the same time, but the agreement to purchase the coal at 65 per cent was made prior to the purchase of the Pennsylvania Coal Company.

Q. The Pennsylvania Coal Company was purchased by the Erie Railroad Company?—A. Yes, sir.

Q. And what thereafter became of the projected Delaware Valley and Kingston Railroad?—A. The Erie Railroad secured that at the same time—the franchise.

Q. When was it that this Delaware Valley and Kingston Railroad was projected; what year?—A. I think that was in 1900 or the fall of 1899. [Referring to memorandum.] The application of the Delaware Valley and Kingston Railroad Company for a certificate was filed with the board of railroad commissioners of New York State in December, 1899, and the certificate was granted in April, 1900.

Q. While the Anthracite Coal Operators' Association was in operation there was a journal published by it called the Association Letter, was there not?—A. Yes, sir.

Q. And that Letter contained, from time to time, the proceedings of the association?—A. Yes, sir.

Q. I show you a copy of that Letter for December, 1899, in which, on page 6 and following pages, there is an account of a meeting held on November 22, 1899, at which a certain resolution was passed. I ask you to examine that publication and account of that meeting, and state whether or not it corresponds with the facts.

Judge CAMPBELL. I object to the introduction of this testimony as incompetent and immaterial.

Judge Moot also objected to this testimony.

A. (After looking at journal referred to.) I would like to correct my testimony, to this extent: I was unaware of the fact that I was

chairman of the executive committee; it is so long ago that I had forgotten. I see by this that I was.

(Question read to the witness.)

A. I should say so.

By Mr. McREYNOLDS:

Q. Please read into the record the account of that meeting from the beginning down through the first resolution that was passed.

Judge MOOT. I demand of the government counsel, as my right, an opportunity to examine this publication before the witness reads into the record, in order that from such examination I may make such objections as appear, upon the face of that publication to be there disclosed, as objections that should be made to the form of the question and to the substance of the testimony sought to be adduced in this way without making an exhibit of the document to be read or submitting it to the inspection of counsel that he may frame his objections to it.

Mr. McREYNOLDS. Read into the record what I have asked you and then turn it over to counsel for his inspection.

The witness read the following from The Association Letter of December, 1899:

"A stated meeting of the Anthracite Coal Operators' Association was held at the Hotel Waldorf-Astoria, in New York, on November 22, 1899. Luncheon was served, and at its conclusion the members were called to order.

"Mr. E. L. Fuller, chairman of the executive committee, on being called upon, told of the efforts which have been made to induce the various anthracite railroads to offer more satisfactory terms for the purchase of the operators' coal, and of the absolute failure of these efforts to bring about any definite result. He then reported the organization of the Delaware Valley and Kingston Railroad, backed by the Pennsylvania Coal Company, and the proffer of this latter company to purchase coal from operators in the Wyoming and Lehigh region, paying 65 per cent of the tide-water price for chestnut and larger; 50 per cent for pea coal, and a flat 85-cent freight rate on buckwheat and smaller sizes. These contracts were to be for all of the coal in the ground, thus settling permanently the price which the operator would receive.

"After extended discussion as to the details of these contracts, and a comparison with the results obtained under the old contracts, the following resolution was offered and passed unanimously:

"Whereas the Erie and Wyoming Valley Railroad Company has arranged to build a branch line from Hawley, Pa., to a point on the boundary line between New York and Pennsylvania at Lackawaxen, forming a connection with a railroad proposed to be constructed by the Delaware Valley and Kingston Railroad Company to tide water, at Kingston, on the Hudson river;

"And whereas the construction of the said railroads is approved and promoted by the Pennsylvania Coal Company, which has large interests in the anthracite coal region;

"And whereas the independent operators and the general public are now largely at the mercy of existing railroad companies, which charge unreasonable rates for their services, owing in part to the large amounts for which the said companies have been capitalized;

"And whereas it would be highly advantageous to all the independent owners of coal properties throughout the entire anthracite region of Pennsylvania to have the railroad connection, now proposed, completed as speedily as possible;

"And whereas it is equally desirable, in the interests of the people of the State of New York, and the public in general, that such railroad connection shall be made (since it will necessarily result in a material reduction of the price paid for anthracite coal by consumers), now, therefore, it is

"*Resolved*, I. That this association hereby expresses its hearty and unqualified approval of the proposed plan for the construction of the said railroads, and hereby pledges its constant support and active assistance in promoting the speedy construction and com pletion of the said railroads.

"II. That a committee of three be appointed by the president, of which the president shall be a member, to take such steps as may be deemed advisable toward furthering the said plans and cooperating with the said companies for the completion of the said railroads, and that a report of their proceedings be submitted to the next meeting of this association.

"In the discussion which followed, it was the opinion of those present that, in view of the hearty assistance which had been accorded the operators by the Pennsylvania Coal Company, it was the duty of the members to give to this company all of the tonnage which they could deliver and not to permit any more advantageous offers which the older companies might make, to divert freight from a road which was constructed to give the operators a fair share in the selling price. A vote of thanks was accorded Mr. Fuller for his labor and great success in accomplishing a work which was for the advantage of every individual operator in the anthracite regions. * * *"

Judge Moot. I object further, on the ground that the witness having read this extract into the record, by direction of the government counsel, it now appears therefrom that it is a hearsay newspaper trial and condemnation of the defendants, or some of them, supposedly, not identified by name, date, circumstance, or charge, or under circumstances applicable here under the allegations of the petition, and on the ground that the same is not competent proof of the facts stated, but is mere hearsay, improper, and incompetent for any purpose. I give notice, in behalf of the defendants, that we shall make a motion to strike it out, and shall claim that it is no proof of any or either of the facts stated therein, except that there was a meeting and that it did pass resolutions.

By Mr. McREYNOLDS:

Q. You were present at the meeting, the account of which you have just read from the "Letter" of the Independent Coal Operators' Association?—A. Yes, sir.

Q. State whether or not the minutes which you have read express your recollection of what took place?—A. Yes, sir.

Q. Did the promoters of this projected Delaware Valley and Kingston Railroad Company, or the company itself, after being organized, buy the abandoned Delaware and Hudson Canal, extending from Lackawaxen, Pa., to the Hudson River?—A. Yes, sir.

Q. Was the route of this abandoned Delaware and Hudson Canal intended to be used as the right of way for the proposed road?—A. Yes, sir.

Q. Did this proposed road also acquire terminal facilities on the Hudson River?—A. Yes, sir.

Q. At Kingston?—A. A coal terminus at Kingston.

Q. Where is Kingston?—A. It is practically Rondout. It is on the Hudson River, at or near Rondout.

Q. Between New York and Albany?—A. Yes, sir.

Q. There is water transportation from Kingston to New York City?—A. Yes, sir; except during certain periods of the winter, when the river is frozen.

Q. Did the Pennsylvania Coal Company, in 1899, control a large amount of tonnage?—A. It controlled their own tonnage.

Q. Was that large or small?—A. It was about 2,000,000 tons a year.

Cross-examination by Major WARREN:

Q. Speaking of the projected road known as the New York, Wyoming and Western, you said that you had no faith in that project. I assume you meant that you did not believe that it was feasible to construct that road as it was proposed, in view of the cost incident to such construction, and the available tonnage that it could hope to secure. Am I right in that?—A. That was my reason.

Q. Do you happen to recall the proposed plan by which that road, if it had been constructed, was to secure tonnage from the so-called individual operators; that is to say, what form of contract was it proposed they were to enter into, and what was the basis of it as to the price to be paid to the individuals in case the road had been an accomplished fact and did give an outlet to tide for such operators?—A. I believe there was to be a coal company called the Wyoming Coal Sales Company, and contracts were to be made by the operators with this Coal Sales Company on a percentage basis of the tide-water price.

Q. Do you know what that percentage basis was?—A. I have a form of contract.

Q. If you have a form of contract, can you refresh your recollection from that so as to tell us what this Wyoming Sales Company was to pay the individual operators?—A. (Referring to form of con-

tract.) That is the name, the Wyoming Coal Sales Company. "For all sizes above pea coal, an amount which shall be equal to 65 per cent of the average price received f. o. b. at tide water by the Sales Company for each size respectively."

Q. How about the sizes below pea?—A. (Referring.) "For all pea coal an amount equal to 60 per cent of the average price received f. o. b. at tide water by the Sales Company for such size. For all sizes below and including buckwheat coal, the Sales Company shall pay an amount equal to the average net price received for such sizes f. o. b. at tide water, less 85 cents per ton."

Q. Did that proposed contract contemplate tying up the coal for the life of the colliery, or, was it for a term of years?—A. (Referring.) "Coal company will deliver to the Sales Company in cars at its breaker its entire production of coal, except as hereinbefore specified." My recollection there is that some of the collieries had tied up certain tonnages to other railroads. This ties up the entire production of coal, except as hereinbefore specified. I do not see what that specification is. It is the entire production of the coal.

Q. It is the entire production of the coal for the life of the colliery?—A. That is right. So long as its lease might run. Some leases are perpetual leases, some are term leases. It ties up all the coal that that company controls for the life of that contract.

Q. But had to do with such coal as had not theretofore been tied up with other contracting parties or coal companies?—A. Yes, sir.

Q. If you can tell us, did it contemplate any arrangement by which the coal was to be delivered to the vendee named therein, to wit. the Wyoming Coal Sales Company, at such times and in such quantities as it might designate during the calendar year?—A. Here is an article that seems to cover that: "In consideration of the terms and conditions herein specified, the Sales Company hereby agrees to purchase annually said amount of coal, furnished in cars for the reception of same and the transportation thereof in as nearly equal daily quantities as the requirements of the market and the agreements between the Sales Company and the different parties making coal shipments on said road will permit; it being understood, however, and agreed that the cars shall be supplied the Coal Sales Company with the same regularity and promptness that cars are furnished to other competitors over the said railroad."

Q. Turning to the projected road known as the Delaware Valley and Kingston, in connection with the Pennsylvania Coal Company's operations, the Pennsylvania Coal Company was an old company, having several collieries which it owned, mining coal from its own properties?—A. Yes, sir.

Q. And it had been there back to your earliest recollection of the business; had it not?—A. Yes; it had.

Q. It shipped all of its coal over the lines of the Erie Railroad; did it not?—A. Yes.

Q. Connecting with that road at Hawley, in Pennsylvania?—A. Yes, sir; or Lackawaxen.

Q. It then was a large feeder in the way of freight to the Erie Railroad?—A. It was.

Q. Do you know under what contractual obligation it was at the time of the proposed construction of the Delaware Valley and Kingston Railroad with the Erie Railroad, or with any other of the coal companies controlled by the Erie Railroad, as to the delivery of its coal tonnage to them?—A. My recollection is that it had not any contract at that time with the Erie Railroad.

Q. You do not know, as a fact?—A. I do not.

Q. That is a matter you personally did not investigate?—A. I did not.

Q. Do you happen to know what sort of a contract was proposed to be entered into between the individuals, so called, and the Pennsylvania Coal Company, to which you have referred?—A. I do.

Q. I think you have already stated that the coal was to be sold to the Pennsylvania Coal Company upon an agreed basis of 65 per cent of the tide-water prices, prepared?—A. It was.

Q. As prepared sizes I mean.—A. Yes, sir. I have a copy of the contract here.

Q. You have before you a copy of such proposed contract, have you?—A. I have.

Q. Read that part of it which has to do with the terms for the purchase of the coal by the Pennsylvania Coal Company?—A. (Reading:) "For all sizes above pea coal, an amount which shall be equal to 65 per cent of the average price received by the Pennsylvania Coal Company f. o. b. boat at Weehawken, N. J., or corresponding point in New York Harbor; and for all pea coal an amount which shall be equal to 50 per cent of the average price received by the Pennsylvania Coal Company during same month in which the coal was shipped, when the price of pea coal is $2.50 per ton or less f. o. b. boats at Weehawken, N. J., or corresponding point in New York Harbor; and for each advance of 10 cents per ton in said f. o. b. price above $2.50, the proportion for the operator shall be increased 1 per cent, until the said f. o. b. price reaches the price of any of the larger sizes, after which the said proportion shall be adjusted on the basis of the prices received for the larger sizes. For all sizes below pea coal, and including buckwheat coal, the Pennsylvania Coal Company shall pay an amount equal to the average net prices received by it f. o. b. boats at Weehawken, N. J., or corresponding point in New York Harbor, for such sizes during the same month in which the coal is shipped, less 85 cents per ton. All of the above prices to be paid without deduction for commissions, demurrage, trestle, or other charges." This also provides that if at any time they should pay any higher prices for coal at the mines to other operators they should pay the same advanced prices to the operators making this contract.

Q. For what length of time was that proposed contract?—A. For all the coal in the ground.

Q. For the life of the colliery?—A. Yes, sir.

Q. The contract you have before you had to do with such tonnage, in the case of an individual operator, as had been theretofore tied up by contract?—A. Yes, sir.

Q. So that both as to the Wyoming and Western proposition and the Pennsylvania Coal proposition, in connection with this road to Rondout, the idea was to arrange upon a permanent basis for a sale of all the coal for the life of the colliery by the independents to the Pennsylvania Coal Company and the Wyoming Sales Company upon the basis of 65 per cent on prepared sizes at tide water?—A. That is right.

Q. In what respect, if any, did the contract that was talked about to be entered into between the Wyoming Coal Sales Company and the Delaware Valley and Kingston Railroad—that was talked about to be entered into—and the Pennsylvania Coal Company differ? Did they differ appreciably?—A. They did not.

Q. These contracts as to the connection of the Pennsylvania Coal Company and the Delaware Valley and Kingston Railroad were in some instances executed by the individual operators, were they not?—A. Yes, sir.

Q. But in no instance were they executed by the Pennsylvania Coal Company, were they?—A. They were not. They were dependent upon the construction of that road.

Q. Were the contracts similar in the matter of the time when the Pennsylvania Coal Company was to take its coal—that is to say, were they to take it in such quantities and at such times as the market demands required, not, of course, discriminating as between the different sellers to them in the matter of car supply?—A. (Reading from contract:) "It is understood and agreed that the tonnage will be taken in as nearly equal daily quantities as the requirements of the market will permit."

Q. You have said that during your relations with the anthracite coal business, the railroad coal companies, so-called—that is, the coal companies controlled by the larger anthracite roads—gave to individual operators very varying prices for the coal sold to them at the mines, running from 40-odd per cent to 65 per cent. Do you remember that?—A. I do.

Q. Those variations were always by way of an increase of the price paid to the individual, were they not?—A. Always.

Q. I assume you are familiar with the terms of the 65 per cent contract upon which your company sold to the coal companies controlled by the defendants here, just prior to your retiring from the business, are you not?—A. I am.

Q. The form of this contract is attached by the Government to the petition in this case. Look at that and state whether that form of contract is not substantially the same as the proposed form of contract made at the time of the talk about the New York, Wyoming and Western, and at the time of the discussion with reference to the projected Delaware Valley and Kingston Railroad.—A. It is practically the same.

Q. As to prices?—A. Yes, sir.

Q. And as to the deliveries?—A. Yes. It is practically the same—60 and 65 per cent.

Q. This agitation, as you said, connected with the New York, Wyoming and Western and the Delaware Valley and Kingston was to secure on the part of individual operators a larger price for their coal?—A. It was.

Q. And this price, the desirability of it was occasioned by the increased cost of mining and preparing coal, was it not?—A. It was.

Q. And that involved labor as a considerable factor, did it not?—A. Very largely.

Q. Also, what else did it involve?—A. Working smaller veins, deeper depths, no water to handle.

Q. How about the necessary equipment in the breaker, and the cost of constructing and maintaining breakers in recent years as compared with the previous equipment and machinery?—A. Much more elaborate recently. In the early part of my coal experience a large proportion of our tonnage was shipped as it came out of the mines, the lump coal and broken coal. Later on, those sizes had to be broken, which involved considerable expense, not only by reason of additional equipment in the breaker, but in the loss by breakage, loss on culm, for instance, which was a total loss. We made experiments from time to time to satisfy ourselves about that, and it made a very great difference.

Q. Can you give me any approximation of the difference in cost as compared with conditions prior to these necessary changes and necessary increased cost?—A. I could give you an approximate idea as to the less price received for the coal by breaking it down. I came across this memorandum a few days ago in looking over some papers. One test we made was by taking 200 tons of grate coal, large coal, and breaking that down. The reason was that the market had got to a condition when it would not take grate coal. Figuring that coal on a basis of the price which was quoted at that time on that size, say $2 a ton, and breaking that coal down, which gave us the smaller sizes, prepared sizes and smaller sizes, and culm, there was a loss of about $71 on the 200 tons. A certain proportion of that was stove, egg, chestnut, pea, buckwheat, rice, and culm. Taking the market prices for those sizes at that time, it showed that the loss by breaking that coal down on the 200 tons was $71.

Q. The price received for the prepared sizes, of course, being much larger as resulting from such breaking down?—A. Stove and chestnut, the prices were larger than they were for grate coal, but the larger sizes were so much smaller as to bring the average down.

Q. Can you remember when you made this test; what year?—A. I should say that was along the latter part of 1897 or 1898, along there.

Q. Do you recall the time when the price paid to the individual operators by the railroad coal companies, so-called, was increased from 55 to 60 per cent, in connection with Mr. McLeod's presidency

of The Philadelphia and Reading Coal and Iron Company?—A. Yes. That contract was made in 1892, the 60 per cent contract. It expired in 1899.

Q. Do you remember whether any of the companies with which you were associated at that time were under contract under 55 per cent?—A. I was under a contract for 55 per cent.

Q. Do you remember that Mr. McLeod, representing the company that you sold your coal to at that time, voluntarily raised the price and paid you 60 per cent, though the contract then in existence was at 55 per cent?—A. He not only did that, but dated the contract back a year and a half; that is, he dated the price back about a year.

Q. Of course it goes without saying, that if the price went down at tide upon which this agreed per cent was based as the price to be paid the operator for the coal, then he would get less for his coal?—A. He certainly would.

Q. Having in view the conditions of the trade within your knowledge in recent years, and the increased cost and expenditure incident to the opening and developing of mines, construction of collieries, and mining and manufacturing of coal under present conditions, state whether, in your opinion, the prices now received for anthracite coal at tide are reasonable prices?—A. I should say they were very reasonable—very reasonable. I think they are lower than they should be, from the fact that it is an extremely hazardous business. That I have experienced myself, by losing several hundred thousand dollars over night in one colliery by caving in, and the loss of the lives of fifty odd men besides, which were never recovered. That is one of the contingencies.

Q. When you mine a certain tonnage out of lands which you control as an individual operator, are you not exhausting your capital?—A. Surely.

Q. Is not that an item to enter into the consideration as to the price paid for the product, in all fairness?—A. Certainly. There should be a certain amount charged up to cost, which we call depreciation, because, when the coal is mined, our machinery and plant are useless, of no value.

Q. Nor is there any value to the switch tracks and lines, which are built from the main lines of the carrying roads into those colliery operations, is there?—A. Except for scrap.

Q. You said you sold the Mount Pleasant colliery to the Ontario and Western Railroad. Do you not recall you sold it to the Scranton Coal Company?—A. Yes, sir; I did.

Q. Did you not sell the other operations in the Wyoming Valley to The Lehigh Valley Coal Company?—A. Yes, sir.

Q. And the contracts which were made within your association, during the time of your association with the anthracite business, for the yearly output of the colliery, for whatever length of time the contracts were to sell, were made, in each instance, were they not, with the coal companies controlled by the railroad companies?—A. They were.

Q. Except the Delaware, Lackawanna and Western, which is a coal company itself, also, as you understand it, is it not?—A. Yes, sir.

Q. You have said that, in your judgment, as I understood you, it was to the advantage of the individual operator to sell his coal to the companies controlled by the railroad companies and, among other things, you instanced the question of your experience in attempting to sell coal to the line trade, so-called. Is it not a fact that the line trade is a rather uncertain and indefinite thing, on which an individual operator can not rely in the way of taking any considerable part of his tonnage?—A. We found it so. We experienced considerable loss in our sales besides.

Q. What dependency could you place upon the line trade itself in the matter of market for your operations, within your experience?—A. It was an uncertain trade.

Q. The prices in that trade generally were larger, or otherwise, as compared with the prices received at New York?—A. As a rule, they were higher.

Q. And at times lower?—A. The line trade was very uncertain; the price was varying. At times we would receive a better price than the tide-water price, and at other times it would be less. There was great uncertainty in selling coal, so far as collections were concerned. We experienced considerable trouble along that line. So, taking it all in all, it was not as satisfactory a business as to sell coal in the cars at the breaker to the coal sales company, and receive our money every month, at no expense for capital, traveling expenses, or anything of that kind.

Q. And no risk?—A. No risk at all.

Q. In the matter of doing the business?—A. None at all.

Q. That was assumed by the coal company controlled by the railroad company?—A. It was. A very important factor in our coming to the decision.

Q. You spoke of the Pennsylvania Coal Company's capital stock having been acquired by the Erie Railroad Company interests in 1900, I think, you said?—A. Yes, sir.

Q. Are you sufficiently familiar with the property owned by the Pennsylvania Coal Company to tell us, as a commercial proposition, whether that purchase was a good one by the Erie Railroad Company?—A. I know it was.

Q. Was the property worth, in your judgment, more than that paid, or only that which was paid? What have you to say as to that?—A. I thought it was worth more, and made a proposition to pay them more for it than they paid for it.

Q. Yourself?—A. I did. Several millions of dollars more.

Q. They had in the ground, as you understood it, what estimated tonnage of coal?—A. They had well upwards of a hundred millions of tons.

Q. They had several collieries, did they not, in active operation?—A. They had.

Q. They owned and controlled the interest in the Erie and Wyoming Valley Railroad, that ran from Hawley and tapped their several collieries?—A. I so understood it.

Q. In the number of the periodical, known as "The Association Letter," of December, 1899, out of which the Government's counsel has asked you to read certain assumed resolutions of the Anthracite Coal Operators Association, I read this, upon page 3:

"It may be well to state that this new railroad is not constructed for the purpose of annoying or fighting the existing anthracite carriers. It is purely a business proposition. The company controlling it has determined that it would be more profitable to construct its own railroad and haul its own coal to market, than to depend upon another for this transportation. In providing for itself, it is natural that it should desire to increase the traffic over its line and with this in view it has made advantageous offers to other shippers. In doing this it has violated no law, no agreement, and no understanding, but it is furthering the development of the section of country through which it will pass, and also aiding in establishing the anthracite mining industry on a more permanent and profitable basis. It has no desire to enter into a fight and no intention of doing so unless forced by unwise actions of the other interests. The initiative must come from them and theirs will be the responsibility for the results."

Calling your attention to the utterances in this periodical, do you know whether that represented the attitude of those, including yourself, who were interested, to a greater or less extent, in the proposed projected Delaware Valley and Kingston Railroad in conjunction with the Pennsylvania Coal Company?—A. It certainly did.

Redirect examination by Mr. McREYNOLDS:

Q. Do you remember from what source it was expected that the New York, Wyoming and Western Railroad would get its largest proportion of tonnage; what operators were to furnish it?—A. The majority of the operators, I think, it was understood should furnish coal, operators in the Wyoming region. I do not know that. I do not know how much coal, for instance, Simpson & Watkins had tied up with other roads. I do not know which operators would furnish the largest tonnage.

Q. Simpson & Watkins were to furnish their coal, as you understood it?—A. What was not tied up with other roads; yes.

Q. Was it about the time that this New York, Wyoming and Western Railroad was being discussed and under consideration that Simpson & Watkins sold out their collieries to The Temple Iron Company?—A. I think they sold in 1899, and that was under consideration at that time.

Q. You stated in answer to counsel that this proposed Wyoming Coal Sales Company had gotten up a form of agreement which it was proposed to enter into with various operators?—A. Yes, sir.

Q. Were those agreements actually entered into, or was that whole matter dropped?—A. Those contracts were never signed, to my knowledge.

Q. What you read from, and what you testified to, was the thing which the promotors of the road expected eventually to secure in the way of contract?—A. You are referring to the New York, Wyoming and Western?

Q. Yes.—A. I had not enough to do with the details of that to know whether any of the operators had actually executed those contracts. So far as the other road was concerned, they did execute it.

Q. You mean so far as the Delaware Valley and Kingston road?—A. Yes.

Q. Those contracts were actually executed?—A. Yes, sir.

Q. What became of those contracts after the road was abandoned?—A. They were executed by the operators and placed in my hands, and, after the contracts were agreed to be entered into with the other roads, I returned those contracts to the operators.

Q. You mean the operators executed the contracts and delivered them to you in escrow?—A. Yes, sir.

Q. With instructions to use and take such steps in reference to them as their interests demanded, or to turn them over to the railroad when the time came; is that correct?—A. That is right.

Q. When the Pennsylvania Coal Company sold out to the Erie Railroad Company, was it a condition of that sale that the other independent operators in the region should be taken care of on a 65 per cent basis by the railroads?—A. No, sir; I think not. I know it was not so, now that I think of it. The companies agreed, for instance, the Erie Railroad Company, and the other railroad companies through their coal companies, agreed to make the 65 per cent contracts with the operators, and at that time one of the railroad presidents stated to me that they would not buy out the Pennsylvania Coal Company at the price which was asked, so that the agreement to make the contracts was before the purchase, or agreement to purchase, the Pennsylvania Coal Company was settled.

Q. Do you know the price paid the Pennsylvania Coal Company?—A. Yes; approximately.

Q. How much?—A. About $28,000,000.

Q. What was its capital stock?—A. The Pennsylvania Coal Company proper was $5,000,000, but the Erie and Wyoming Valley road, which was controlled by it, went into this purchase price, and I do not know what their capital was.

Recross-examination by Major WARREN:

Q. Did not there also go into this transfer and purchase the Dun-Moore Iron and Steel Company?—A. I believe so, and coal docks at Buffalo, and other things. I do not know just what went in.

Q. This arrangement which was made by which the railroad coal companies, so-called, gave the 65 per cent contract, do you not recall that that was immediately after the strike of 1900?—A. Yes, sir. It was during 1900, I believe.

Q. Do you not remember that it was agreed, so far as your knowledge now goes, that these contracts were to go into effect after Novem-

ber 1, 1900; in other words, the date the miners resumed work at an increased wage of 10 per cent?—A. It was by reason of the increase that this price was paid, 65 per cent. It was more than 10 per cent. The nominal increase was 10 per cent, but as it worked out it was considerably more than that.

Q. That is to say, the nominal increase to the miners was more than 10 per cent, but it actually worked out more than that?—A. It did.

Q. And the individual operators urged that as the reason for an increase in the prices they were to receive for their coal, did they not?—A. That was the reason.

Q. And did they not also urge this, that the railroad coal companies, so-called, had agreed to this increase of wage rate in the settlement of the anthracite strike of 1900 without the concurrence of the individual operators?—A. They did. The individual operators were opposed to it. That forced the individual operators to increase their wages.

Q. They had not agreed to it in conference with the miners at all.—A. No. They would have had no miners if they had not, if the railroad coal companies were paying the increase.

Q. Was not this also discussed in the negotiations between the individual operators and the railroad coal companies, that they would not agree to post notices at their collieries allowing to their employees this increase granted by the railroad coal companies without some assurance of a larger price for the coal, to take care of what that meant to them in the way of the increased cost of mining coal?—A. Practically so. We refused to post anything, and, I think, the others also did.

By Mr. McREYNOLDS:

Q. Who was this railroad president who told you that they would not buy the Pennsylvania Coal Company at the price offered?—A. Mr. E. B. Thomas.

Q. What company was he president of?—A. The Erie Railroad Company.

Q. Did you discuss it with any other railroad president?—A. I did not. No other railroads were interested.

By Major WARREN:

Q. You said you offered several millions of dollars more than the Erie Railroad paid for the Pennsylvania Coal Company's properties. Can you tell me how many millions more?—A. I offered five millions more.

Q. And this was to the Erie Railroad Company after they bought it?—A. This was; yes, sir. It was worth ten millions more.

(Adjourned until Tuesday, December 8, 1908, at 10.30 o'clock a. m., at New York.)

Met pursuant to adjournment at New York, Tuesday, December 8, 1908, 10.30 a. m.

Present, the Examiner, and Messrs. McReynolds, Todd, Campbell, Moot, Warren, de Forest, and Opdyke.

DAVID BOSMAN, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. TODD:

Q. What is your present connection with the Erie Railroad Company, The New York, Susquehanna and Western Railroad Company, the Hillside Coal and Iron Company, the Pennsylvania Coal Company, and The New York, Susquehanna and Western Coal Company?—A. I am secretary of all those companies.

Q. How long have you been secretary of those companies?—A. Four years.

Q. Were you connected with any of them before that time?—A. As assistant secretary, in 1903.

Q. You had been assistant secretary since 1903?—A. Assistant secretary in 1903; secretary since 1904.

Q. Before 1903 were you connected with any of them?—A. Not officially.

Q. Were you connected with any of them in any subordinate capacity?—A. Just in a clerical position.

Q. Since what date?—A. With the Erie since about 1887, and with the other companies since the acquisition of those companies by the Erie.

Q. In obedience to a subpœna you have produced, first, an exact copy of the minutes of the stockholders' meeting of the Erie Railroad Company, held on March 11, 1898, where the acquisition of certain shares of The New York, Susquehanna and Western Railroad Company was considered; and, secondly, you have produced a communication dated March 18, 1898, addressed to all stockholders of The New York, Susquehanna and Western Railroad Company, and signed by the Erie Railroad Company, by E. B. Thomas, president, referring to the proposed acquisition of the shares of The New York, Susquehanna and Western Railroad Company by the Erie Railroad Company; and, thirdly, a communication dated January 10, 1901, addressed to the holders of the stock trust certificates for first preferred, second preferred, and common stock of the Erie Railroad Company, signed by the directors of the Erie Railroad Company and indorsed by the voting trustees of the stock of the Erie Railroad Company, in relation to the acquisition of the capital stock of the Pennsylvania Coal Company, the Erie and Wyoming Valley Railroad Company, and the Delaware Valley and Kingston Railroad Company. These are the documents which I have described, are they not? (Showing witness papers.)—A. Yes, sir.

Mr. Todd offered in evidence the documents referred to marked, respectively, Government Exhibit No. 153, Government Exhibit No. 154, and Government Exhibit No. 155.

Q. At the time of this stockholders' meeting of March 11, 1898, the capital stock of the Erie Railroad Company was voted by the voting trustees, was it not?—A. Yes, sir.

Q. Those trustees were Mr. J. Pierpont Morgan, Mr. Louis Fitzgerald, and Sir Charles Tennant?—A. Yes, sir.

Q. Do you recall how long after that they continued to be the voting trustees of the Erie Railroad's capital stock?—A. I think until some time in 1903 or 1904.

Q. So when, in the minutes of this meeting of March 11, 1898, it is recited that all the stock of the Erie Railroad Company was voted in favor of the resolution introduced by Mr. Stetson, and set out in these minutes, it meant that these voting trustees voted the stock, did it not?—A. As the holders of all the stock.

Q. In accordance with this communication dated March 18, 1898, and addressed by the Erie Railroad Company to all the stockholders of The New York, Susquehanna and Western Railroad Company, and upon the terms stated in that communication, the Erie Railroad, up to the close of the fiscal year ending June 30, 1898, as shown by its annual report for that year, had acquired 122,463 shares of common and 128,440 shares of the preferred stock of The New York, Susquehanna and Western Railroad Company, out of a total issue of 130,000 shares of each kind, had it not?—A. According to the report it had; yes, sir.

Q. Referring now to the communication of January 10, 1901, addressed by the directors of the Erie Railroad Company to the holders of the stock certificates for the first preferred, second preferred, and common stock of the Erie Railroad Company, did not the stockholders of the Erie Railroad Company, at a date subsequent to this, approve the plan outlined in this communication, and thereafter did not the Erie Railroad Company, upon the terms and conditions stated in this communication, acquire all of the stock of the three companies named—that is, the Pennsylvania Coal Company, the Erie and Wyoming Valley Railroad Company, and the Delaware Valley and Kingston Railroad Company?—A. Yes.

Q. The capital stock of the Hillside Coal and Iron Company formerly belonged to the old New York, Lake Erie and Western Railroad Company, did it not?—A. Yes, sir.

Q. And was acquired by the present Erie Railroad Company at the foreclosure sale of the property of the New York, Lake Erie and Western Railroad in 1895, was it not?—A. Yes, sir.

Q. Does the Erie Railroad Company or The New York, Susquehanna and Western Railroad Company own stock in any other anthracite coal company than the Hillside Coal and Iron Company, the Pennsylvania Coal Company, and The New York, Susquehanna and Western Coal Company?—A. The Erie Railroad Company does not; no, sir.

Q. Does The New York, Susquehanna and Western Railroad Company own stock in any anthracite coal company beside The New York, Susquehanna and Western Coal Company?—A. It does not.

Q. Does the Hillside Coal and Iron Company own stock in any other anthracite coal company?—A. Yes, sir.

Q. Will you name the company or companies and state, in each case, how much of the capital stock of the company it owns in round numbers?—A. The Hillside owns all of the stock of the Butler Mining Company (Limited), $50,000. It did own $24,000 capital stock (all) of the Florence Coal Company (Limited). It does not now. That company has gone out of existence by the terms of its charter. Six thousand dollars (all) of the capital stock of the Yatesville Coal Company; $200,000 (all) of the capital stock of the Clarence Coal Company. These are all the companies owned by the Hillside Coal and Iron Company.

Q. Does each of those companies that you have named own anthracite coal lands?—A. I understand they do.

Q. Do you know whether their holdings of anthracite coal lands were included in the statement which has been furnished by the Hillside Coal and Iron Company of its holdings of coal lands?—A. I do not know.

Q. Do you know whether the lands of those subsidiary companies which you have named are extensive or comparatively small in area?—A. I do not know.

Q. Does the Pennsylvania Coal Company own the stock of any other anthracite coal companies?—A. It owns $20,000 (all) of the capital stock of the Avoca Coal Company.

Q. Any other?—A. None other.

Q. Does The New York, Susquehanna and Western Coal Company own stock in any other anthracite coal company?—A. Not that I know of.

Cross-examination by Judge Moot:

Q. J. P. Morgan & Co. for many years have been the fiscal agents of the Erie Railroad Company and its predecessors?—A. They have; yes.

Q. Do you know about how many years?—A. Over thirty.

Q. During that time is it a fact that they have represented nearly all the foreign stockholders in that company and its predecessors?—A. Yes, sir.

Q. Is it a fact that that company has had a very large number of foreign stockholders in Holland and England and other foreign countries during all those years?—A. It is a fact.

Q. And has to this day?—A. A very large number.

Q. Has some member of the firm of J. P. Morgan & Co. been a member of the executive committee of the Erie Railroad Company or its predecessors for a long period of years, or do you not know?—A. I can not recall, prior to 1895, who was on the board.

Q. But since 1895 some member of that firm has been a member of the executive committee?—A. Yes, sir.

Q. And some member of that firm has been a member of the board of directors?—A. Yes, sir.

Q. Do you know whether the same firm, J. P. Morgan & Co., have also during all those years represented a large number of the holders of the bonds and other securities of the Erie Railroad Company or its predecessors?—A. They have.

Q. I show you a statement on page 21 of the annual report of the Erie Railroad Company for 1901 with reference to the acquisition of the Pennsylvania Coal Company properties. Do you know, or who would know, about the facts covered by that paragraph with reference to the Pennsylvania Coal Company properties?—A. I do not know it.

Q. In like manner I call your attention to the certificate of increase of the capital stock of the Erie Railroad Company, dated January 10, 1901, reciting the reports made and steps taken in the acquisition of the Pennsylvania Coal Company and its properties. Do you know about the facts recited in that, or can you tell me who knows about those facts?—A. I do not know it.

Q. You only know that each of these is a document that you furnished the government counsel at his request?—A. That is all.

Q. Have you personally the means of knowing whether or not any of those so-called Pennsylvania collateral fours issued by the Erie Railroad Company to acquire the Pennsylvania Coal Company and allied properties were sold and are held by holders in foreign lands, or do you not know?—A. I do not know that.

Q. That you could not tell?—A. I could not tell.

Q. That would come to the treasurer, would it, or somebody that has occasion to pay the interest on those bonds?—A. It would probably be the treasurer; yes, sir.

ARCHIBALD F. LAW, recalled.

Direct examination by Mr. MCREYNOLDS:

Q. You were examined in Philadelphia on the 24th and 25th of November?—A. I was.

Q. While in Philadelphia you produced the minutes of The Temple Iron Company, which had been kept by you for a number of years?—A. I did.

Q. When had you last examined those minutes before they were introduced?—A. You mean carefully?

Q. No; I mean in any way.—A. I can not recall that. I possibly might have referred to certain minutes for certain information, but I can not recall that I read the minutes over carefully for a long time.

Q. Had you not examined those minutes before you brought them down at the request of the Government to be introduced?—A. I did not go over them very carefully.

Q. How carefully had you gone over them? Just give us an idea, please.—A. I did not read them over at all just before I brought them down. As I said before, I probably had looked at certain minutes for information on specific matters relating to the business of The Temple Iron Company.

Q. You had not examined the minutes which disclosed the fact that a committee on freight rates to outside shippers had been appointed?—A. I did not.

Q. You were asked to produce here certain papers. Have you them with you?—A. I have not. I made a very careful search, with my assistants, for those papers, and have been unable to find any of them. I can tell you something, I think, about some of them, however, from recollection.

Q. You were asked to produce a letter from the president to the board of directors, reciting the action taken by the president in sundry matters relating to the business of the company. This letter was referred to in the minutes of June 27, 1899. Did you find that letter?—A. I did not.

Q. Can you tell us anything about it?—A. I think that that letter from Mr. Watkins was entirely in relation to projected improvements, or extensive improvements under way just at that time. That is my opinion about it.

Q. I do not want your opinion unless you know.—A. I have a faint recollection now that that was the subject of a letter, or a communication, that was signed by Mr. Watkins—very faint.

Q. You are asked to make a search of the records of The Temple Iron Company and to produce any reports made by a committee appointed at a meeting held July 2, 1901, of which Mr. Cumming, Mr. Sayre, Mr. Henderson, Mr. Caldwell, and Mr. Warren were members. Did you find that report?—A. I did not, nor did I find any communications in the letter books relating to that report, either acknowledging it or anything of the kind.

Q. Did you make diligent search for it?—A. I did.

Q. What can you tell us now about that report?—A. I recall nothing about it. I do not think that we ever had that report.

Q. What do you know now about that committee?—A. I can not recall it.

Q. You can not give us any information on that subject at all?—A. I have not the faintest recollection.

Q. What can you tell us about the action taken at any time by The Temple Iron Company, or any committee appointed by it, in reference to freight rates to outside shippers?—A. Nothing whatever.

Q. You were asked to find and produce a letter from Mr. J. B. Dickson, presented at a meeting of the company held July 30, 1901. Did you find that letter?—A. I did not, but I can tell you something about that now, I think.

Q. Your memory is good about that?—A. It is just a recollection. It is not very strong, but I remember it, either that one or the other one from Dickson and Eddy, possibly both of them—one anyway, I refer now to the circumstance connected with the presentation of the letter, not the letter itself or its contents.

Q. If you do not know what the letter is, we will pass on to the next one. At a meeting held Tuesday, September 17, 1901, a communication was presented from Messrs. Dickson and Eddy relative to

a 5-cent differential. Did you look for that communication?—A. I did.

Q. Did you find it?—A. I did not.

Q. Do you know what it was?—A. I do not. My recollection of the matter is that one or both of these letters were read to the board by the president of the New York, Ontario and Western Railroad, Mr. Fowler, and retained by him. That is my recollection of those documents.

Q. At a meeting held on October 8, 1901, the president presented a letter from Mr. W. W. Ruley, wherein he asked for extra compensation, stating that, owing to the increase in the services required of him, the present allotment was inadequate. Did you find that letter?—A. I did not.

Q. Do you know what it contained?—A. I do not, other than is recorded in the minutes.

Q. Do you know whether any extra compensation was allowed to Mr. Ruley?—A. I do not. It did not affect The Temple Iron Company.

Q. What was the extra compensation for then?—A. I am sure I do not know, unless it was claimed by Mr. Ruley for extra work.

Q. Was he doing any work for The Temple Iron Company?—A. No, sir.

Q. How could he claim extra compensation from The Temple Iron Company for extra work if he was not working for them?—A. I do not know.

Q. You do not know anything on the subject?—A. I do not.

Q. You do not know anything that would enlighten us in reference to that entry on your minutes?—A. I do not.

Q. What relationship, technical or official, have you to the various companies formerly controlled by Simpson & Watkins and the stock in which was conveyed by them to The Temple Iron Company?—A. You mean as a matter of management?

Q. No; I mean as a matter of official connection.—A. I am the president of the coal companies.

Q. Each of these subsidiary coal companies?—A. I am.

Q. How many of them are there?—A. Eight, seven stock companies and one limited company. I am chairman of the limited company, which is the Lackawanna Coal Company (Limited).

Q. Each one of these subsidiary companies controls some particular colliery?—A. Yes, sir.

Q. And operates it?—A. And operates it. One company has two operations, the Forty Fort Coal Company.

Q. Does The Temple Iron Company own all the stock in each of those subsidiary companies?—A. All but Lackawanna.

Q. How much of that does it own?—A. Four-fifths.

Q. Do you remember when the 65 per cent contracts were entered into by The Temple Iron Company and the various coal companies to which it now sells coal?—A. In the fall of 1901, September, I think.

Q. Were they retroactive?—A. They were; yes, sir.

Q. As of what date did they take effect?—A. The 1st of November, 1900.

Q. Were other 65 per cent contracts made with mining companies also retroactive, do you know?—A. I understand that they were.

Q. And that they took effect as of the 1st of November, 1900, generally?—A. I understand that they did.

Q. I believe you have heretofore stated that the coals of The Temple Iron Company are, at least technically, sold and delivered at the mouth of the collieries?—A. They are sold to the purchasing companies in the cars at the colliery, delivered on board at the collieries.

Q. You undertake to deliver them to the purchasing company on board cars at the mouth of the breakers?—A. At the breakers.

Q. Tell us practically, please, how that coal is designated for shipment.—A. It varies at different collieries and with different purchasers. I think I understand your question, and I will attempt to answer it along the line of thought which I have. Part of it is shipped on orders from the purchasers and billed in the usual manner of billing freight of that kind from the colliery. Part of it is sent in bulk on single waybills to the distributing yards of the purchasers. That is true in the case of the New York, Ontario and Western and the Delaware, Lackawanna and Western railroads. They bill their own coal, and the coal they purchase from us we send to their distributing or forwarding yards.

Q. Where are those located?—A. The forwarding yard of the New York, Ontario and Western is located at Mayfield, Pa., about 2 miles south of Carbondale. The Delaware, Lackawanna and Western has two, I think—three: One near Scranton, one about 4 miles below Scranton, and one at Kingston, Pa., 19 miles south of Scranton.

Q. Do you know what becomes of the coal after it gets to these forwarding yards?—A. I do not.

Q. You do not know where the coals are sold?—A. I do not.

Q. Are they sent from those forwarding yards to tide at New York in part?—A. I am unable to say.

Q. You have no information on that subject?—A. Absolutely none.

Q. The coals that are sold to the other purchasing companies and are billed by you, where do they go?—A. To various points.

Q. Give us some.—A. I can not tell. I have not seen, as I testified in Philadelphia, a waybill or shipping report in ten or fifteen years.

Q. You do not know?—A. No; I am not interested particularly.

Q. Do those coals come in part to New York Harbor?—A. I imagine so, but I have no personal information.

Q. Who would know about that?—A. The shipping clerks at the collieries or the parties to whom the coal was consigned or by whose order it was consigned.

Q. What have been the financial results of the operation of The Temple Iron Company?—A. Very profitable.

Q. Has it paid dividends?—A. Yes.

Q. What dividends have been paid in each of the last five years?—A. The amount or the percentage?

Q. Just the percentage.—A. Six per cent.

Cross-examination by Major Warner:

Q. The second thing the government counsel asked you to produce while you were in Philadelphia was the report of the committee, and he named the membership of it, Mr. Cumming, Mr. Sayre, and other gentlemen, having to do with the advisability and expediency of making a 40 per cent rate. I understood you to say this morning that you had made a careful search amongst the records, files, memoranda, and letter books of the company and could find no reference whatever to any report of any such committee. Is that right?—A. That is correct.

Q. So far as your recollection goes, was there ever such a report made by any committee to The Temple Iron Company?—A. I have no recollection of any such report.

Q. What, if anything, had that committee to do with The Temple Iron Company?—A. Nothing at all.

Q. Your recollection is as to the Dickson & Eddy letters, or the individual letter of J. B. Dickson of that firm, that it was presented by Mr. Fowler, a director of The Temple Iron Company, but at the same time the president of the New York, Ontario and Western Railroad and retained by him. That is your faint recollection about it?—A. That is my recollection of it.

Q. But, at any rate, you can not find it or them anywhere among the papers and records of the company?—A. I can not.

Q. The records of the company you have examined, have you not, where they are stored at one of the colliery operations?—A. Very carefully.

Q. Have you any recollection of any report made, or of hearing of any investigation made, in connection with the 5 cent differential matter referred to by Mr. Fowler, a director, at the directors' meeting of September 17, 1901?—A. I have no recollection of it.

Q. Or of it ever appearing or being mentioned at any subsequent meeting?—A. I never heard of it again.

Q. You were asked by Mr. Todd to produce a list of the directors of the company for the year 1898 and every year thereafter. Have you produced that for them?—A. I have that here.

(The witness produced list and handed it to Mr. Todd.)

Q. This morning you said that you had no recollection whatever of any of the contents of the communications submitted at a directors' meeting by Mr. Ruley asking for increased compensation beyond what the minutes said, and I understood you to say, further, that The Temple Iron Company had nothing to do with Mr. Ruley, so far as you can recall?—A. That is right.

Q. I want to ask you, for my own information, whether The Temple Iron Company, as an individual operator, does not, or has or has not, contributed to the expenses incident to the maintenance of the bureau, so-called, of which Mr. Ruley is the head, upon whose report,

of upon the report of which, the settlements are made between the parties to whom you sell coal and your company?—A. We have not.

Q. You further said that the 65 per cent contracts, though made in the summer or early fall of 1901, were retroactive—that is to say, they dated back to November 1, 1900—as to The Temple Iron Company contracts, and further that your understanding of it is that that same arrangement was entered into by other individual operators in that region. Do you recall saying that?—A. I do.

Q. Do you not recall that that is the date at which the miners resumed work after the strike of 1900, which had existed for several weeks, at increased wages of 10 per cent or better, as it worked out?—A. That is correct.

Q. Do you not understand, further, that, as to the independent operators in the northern region at least, there was an acquiescence on the part of the individuals in this increased wage scale, it having theretofore been announced and posted at the breakers by the larger coal companies, upon the understanding that, as that added materially to their cost of mining and manufacturing coal, the contracts, not then negotiated to their completion, should, when negotiated and completed, date back as of that date?—A. That is my recollection of it.

Q. I understood you to say that you came with the companies with which Simpson & Watkins were associated, in the year 1885?—A. I did, those that were in existence at that time.

Q. Can you tell us which of the companies, the stock of which was afterwards sold to The Temple Iron Company, were then under the control of Simpson & Watkins?—A. The Northwest Coal Company (Limited); the Edgerton Coal Company (Limited). I would like to say, by the way, that I was at the Northwest for the first year and a half and had nothing to do with any other colliery.

Q. Serving in what capacity there?—A. Weigh master and general utility man, clerk.

Q. Learning the business?—A. Learning the business, that is what I went there for.

Q. That is, learning the practical side of the business?—A. Yes.

Q. The firm of Simpson & Watkins had to do with what as a firm?—A. Company stores, so-called.

Q. That is to say, the business of general merchandise at stores in the vicinity of their colliery operations?—A. That is correct. At that time they also had a diamond drilling business.

Q. Under the firm name?—A. Under the firm name of Simpson & Watkins; not in any way connected with the coal mines.

Q. Are you able to state under what conditions these properties controlled by Simpson & Watkins were acquired and what obligations the company was under relative to the shipment of its tonnage?—A. I can.

Q. Will you take them up, please, in order and briefly state them?—A. The Northwest operation comprised two leases, originally three. One was abandoned, the small one. The larger one was leased

from the heirs of G. L. Morss. The smaller territory, about 19 acres, was leased from the Hillside Coal and Iron Company. The coal lease from the Morss estate was not bound for shipment over any given railroad. That leased from the Hillside Coal and Iron Company was bound by the lease to the Erie Railroad.

Q. That is to say, a part of the consideration of the lease by the Hillside Coal and Iron Company to the company was that the tonnage acquired from the land so leased was to be shipped by the Erie Railroad?—A. That is correct.

Q. Is not that the way it is stated?—A. Yes. The original Edgerton lease was with Hosie, Parke & Price. A number of small coal territories were added to it from time to time later on. None of those coals was bound by the lease to any railroad, as there was no railroad near the breaker at the time it was projected. The Erie Railroad Company loaned a sufficient amount to the owners of the leases to build a breaker, and they also constructed a track 2½ miles long, connecting the breaker with the Delaware and Hudson line, the consideration being that all of the products of the colliery for all time should be delivered to the Erie Railroad.

Q. They built that line from what point on the Delaware and Hudson Railroad?—A. From Mayfield, on the Delaware and Hudson, to the colliery.

Q. And the coal got from Mayfield to the Erie Railroad how?—A. By way of the Delaware and Hudson Railroad from Mayfield to the Carbondale yards of the Erie Railroad, Jefferson branch.

Q. How much of a line did the Erie have to build from Mayfield to the breaker?—A. About 2½ miles of rather difficult construction.

Q. The Edgerton colliery being situated where, with reference to the Valley and the Hillside?—A. In a ravine about half way up the mountain.

Q. How, approximating the outcrop of the coal measures?—A. On the outcrop; almost all on the outcrop.

Q. Tell me the first colliery with which Simpson & Watkins became associated after your employment by them, of which you have knowledge or in which you became interested?—A. The Babylon colliery, situated at Duryea, Pa., about 3 miles north of Pittston. This coal was leased from The Lehigh Valley Coal Company, who were part owners of the land leased, and the consideration for the lease was that the coal should be shipped over the Lehigh Valley Railroad. The next acquisition was the Mount Lookout, located at Wyoming, Pa., about 2 miles south of Pittston. There is one large lease and about 100 small ones for this operation. The village of Wyoming is practically over this operation and the small leases are for the town lots. This coal was not in any way bound to the railroad companies by lease, but there was a stipulation that a tonnage equal to that of Babylon should be shipped over the Lehigh Valley from Mount Lookout as a part of the consideration, I believe, for the option on the Babylon property. The next acquisition was the Forty Fort property, on which was located two collieries. This property

was leased from the Wyoming Valley Coal Company, which is owned by The Lehigh Valley Coal Company, and the lease stipulates that the coal shall be shipped over the Lehigh Valley Railroad, or over such lines as they may designate. The next colliery acquired was the Lackawanna, or an interest in it.

Q. What interest, if you remember, was acquired by Simpson & Watkins in the first instance in the Lackawanna?—A. A fifth interest, Simpson & Watkins later acquiring an option on three-fifths of the remaining four-fifths.

Q. In other words, they acquired options on three-fifths of the remaining four-fifths from the owners thereof; is not that right?—A. That is correct. I had very little to do with the Lackawanna operation before its sale to The Temple Iron Company, as Simpson & Watkins were minority stockholders and were not greatly concerned in its management, but, from information, I should say that a large proportion of its tonnage was not bound by lease to any railroad.

Q. Do you not know that the Lackawanna Coal Company (Limited) was assisted in its original construction by the New York, Susquehanna and Western Railroad many years ago, upon the pledge that its tonnage would, in those early years, go, at least that which they then had to dispose of, to that railroad?—A. I think that is so. That had passed from my mind. It is a good many years ago and my knowledge of the concern at that time was limited. I think that is a fact.

Q. Do you not recall, as a historical fact, that the New York, Susquehanna and Western Railroad built a line of road connecting with the Winton branch of the Delaware, Lackawanna and Western Railroad at a point at or near Winton, in the county of Lackawanna, down to certain colliery operations on the westerly side of the valley, among them including that of the Lackawanna Coal Company (Limited)?—A. That is correct.

Q. It was a distance of several miles from Winton, on down the valley?—A. Yes; I should say 6 to 7 miles, anyway. In the last several years a large quantity of coal has been leased from the Hillside Coal and Iron Company, which is all bound to the Erie Railroad Company for shipment, as the consideration for the lease.

Q. That is a lease made since you have had charge of the mining operations of The Temple Iron Company, is it not?—A. Yes. The last colliery acquired by Simpson & Watkins was the Sterrick Creek, located at Jessup, Pa., about 9 miles north of Scranton and 7 to 9 miles south of Carbondale. This coal is all leased from the Hillside Coal and Iron Company, and is bound to the Erie Railroad by the terms of the lease, as consideration. That covers all the colliery operations.

Q. That is to say, its tonnage is bound to be shipped over the Erie Railroad?—A. Yes; that is it.

Q. Its coal is purchased by the Hillside Coal and Iron Company?—A. Yes.

Q. Speaking without detail, how has the coal been shipped since the acquisition by The Temple Iron Company of the properties controlled by Simpson & Watkins as compared with the way it was shipped prior to such acquisition? Practically speaking, the same roads are taken?—A. With the exception of the Lackawanna Coal Company, Limited.

Q. I show you a memorandum headed "Temple Iron Company. Memorandum of sales contracts," a copy of which I handed in Philadelphia to counsel for the Government. Does this memorandum correctly show, being taken from the books and records and contracts in the possession of The Temple Iron Company, the various contracts involving the disposition of the coal prepared by the companies controlled by Simpson & Watkins prior to the acquisition by The Temple Iron Company, and the coal prepared for market by the subsidiary companies now controlled by The Temple Iron Company?—A. Yes, sir; I believe this to be correct, from records in my office.

Major WARREN. I ask that this be incorporated in the record at this point.

The memorandum is as follows:

"*Temple Iron Company. Memorandum of sales contracts.*

"NORTHWEST COAL COMPANY.

"1884 to 1889. No contracts. Coal sold on line by Simpson & Watkins.

"August 30, 1899. Contract with Hillside Coal and Iron Company for three years. The so-called 55 per cent contract.

"January 1, 1891. Contract with Dickson & Eddy, for one year. So-called 60 per cent contract.

"January 15, 1892. Contract with Dickson & Eddy, for four years. Sixty per cent contract. Extended to 1901.

"April 1, 1892. Contract with the Hillside Coal and Iron Company for three years. Sixty per cent contract. Extended to July 1, 1901.

"July 1, 1901. Contract with the Hillside Coal and Iron Company. The so-called 65 per cent contract.

"July, 1901. Arrangement made with Dickson & Eddy to purchase coal on the 65 per cent basis.

"EDGERTON COAL COMPANY.

"August 30, 1889. Contract with Hillside Coal and Iron Company for three years. So-called 55 per cent contract.

"April 1, 1892. Contract with Hillside Coal and Iron Company for three years. Sixty per cent contract.

"February 5, 1902. Contract with New York, Susquehanna and Western Railroad Company, Erie Railroad Company, and Lehigh Valley Railroad Company. Sixty per cent contract.

"NOTE.—This colliery was approaching exhaustion, and the coal was so poor in appearance that it was necessary to market it at a lower price than that provided for in the 65 per cent contract.

"STERRICK CREEK COAL COMPANY.

"June 26, 1891. Contract with Hillside Coal and Iron Company for five years. So-called 55 per cent contract.

"No 60 per cent contract for the coal from this colliery can be found.

"July 1, 1901. Contract with the Hillside Coal and Iron Company. Sixty-five per cent contract.

"THE LACKAWANNA COAL COMPANY (LIMITED).

"July 8, 1881. Contract with New York and Scranton Construction Company. Fifty per cent contract, which was transferred to The New York, Susquehanna and Western Railroad Company by agreement dated June 27, 1883.

"April 1, 1892. Contract with Hillside Coal and Iron Company. Sixty per cent contract.

"August 27, 1901. Contract with Delaware, Lackawanna and Western Railroad Company. Sixty-five per cent contract.

"October 21, 1903. Contract with Hillside Coal and Iron Company. Sixty-five per cent contract.

"There is evidence of a contract with the New York, Ontario and Western Railroad Company in 1890, but the original contract can not be found. There was apparently also a previous contract with the Delaware, Lackawanna and Western Railroad Company.

"BABYLON COAL COMPANY.

"May 7, 1889. Contract with Williams & Peters for the sale of the coal on a commission basis.

"March 7, 1892. Contract with The Philadelphia and Reading Coal and Iron Company, for seven years, on the 60 per cent basis.

"October 31, 1892. Contract with The Lehigh Valley Coal Company on the 60 per cent basis.

"September 20, 1901. Contract with The Lehigh Valley Coal Company on the 65 per cent basis.

"MOUNT LOOKOUT COAL COMPANY.

"January 15, 1889. Contract with Williams & Peters for the sale of the coal on a commission basis.

"March 7, 1892. Contract with The Philadelphia and Reading Coal and Iron Company, for seven years, on the 60 per cent basis.

"September 20, 1901. Contract with The Lehigh Valley Coal Company on the 65 per cent basis.

"FORTY FORT COAL COMPANY.

"November 10, 1893. Contract with The Lehigh Valley Coal Company on the same terms as those applying to other operators in that district.

"September 20, 1901. Contract with The Lehigh Valley Coal Company on the 65 per cent basis."

Q. In giving the location of the various colliery operations to the counsel for the Government in Philadelphia, you referred to them as situated upon certain railroads. As an illustration, you said that the Northwest, as I recall your testimony, was located on the Jefferson branch of the Erie Railroad. As a fact, what, if any, of the collieries controlled by Simpson & Watkins prior to the acquisition by The Temple Iron Company or since is located upon any of the railroads reaching into the anthracite region?—A. As a matter of fact, there is only one; that would be Mount Lookout, at Wyoming.

Q. In other words, each one of these collieries, in order to market its coal, required the construction of a railroad track into it, to its breaker, from some one of the lines running into the anthracite region?—A. Absolutely.

Q. Do you happen to know which of the collieries, if any, have their own switches or branch lines connecting with the roads running into the anthracite region, or is each colliery served by a switch or a spur which is built to it from a road running into the region and built at the expense of that road and the property of that road?—A. With the exception of a few collieries, where we own what we call the breaker track, the track immediately around the breaker, the railroads built all of the switches and tracks connecting with their lines.

Q. Where you own the switches they are only such switches as are in immediate proximity to the colliery operation?—A. That is it.

Q. Do you know how many there are situated in that way?—A. The Northwest owns its breaker switches; the Edgerton does not; the Sterrick Creek does; Lackawanna does; Babylon does not; Mount Lookout does not; Forty Fort and Harry E. collieries both do. The reason for that, if I might explain, is on account of the maintenance of the track. I believe that is the reason why the railroad insisted on having the collieries put in their own breaker tracks; there was so much trouble about keeping them up.

Q. Take Forty Fort and Harry E. collieries. The coal from them has been shipped in recent years by what railroads?—A. The Lehigh Valley, from Forty Fort and Harry E.

Q. The Lehigh Valley gets to that colliery by what means?—A. By a branch known as the Coxton branch, running from the main line to various collieries in the Wyoming Valley, built precisely for that purpose.

Q. Of use for any other purpose than to get coal from the collieries?—A. I think not, with the exception of the delivery of colliery freight, supplies.

Q. I do not know whether you said, but I would like to ask you, so as to be sure about it, whether the Forty Fort and Harry E. properties were not leased from the Wyoming Valley Coal Company?—A. I have already so testified.

Q. Which, in turn, is controlled by The Lehigh Valley Coal Company?—A. I have already so testified.

Q. The coal at Mount Lookout is sold nowadays in what way?—A. In alternate months to The Lehigh Valley Coal Company and the Delaware, Lackawanna and Western Railroad Company.

Q. The Lehigh Valley Railroad gets that coal in what way?—A. By a switch connecting with the Coxton branch and by the Coxton branch with its main line at Coxton.

Q. Of course that switch is only and solely for the coal from the Mount Lookout, I assume?—A. Absolutely.

Q. The Babylon operation, is that at this time operated by The Temple Iron Company?—A. It is not.

Q. It was at the time The Temple Iron Company acquired the properties, was it not?—A. It was. The breaker was burned down in 1901, and a modern breaker is such an expensive construction that it was thought best not to rebuild it, but to enter into an arrangement with The Lehigh Valley Coal Company to prepare the coal through a smaller breaker than the William A., which was owned by the same company; a joint operation.

Q. Aside from that, all of these operations have been conducted since their acquisition by The Temple Iron Company by controlling the stock of them all continuously since such acquisition?—A. Absolutely, with that exception.

Q. I think you said that the Mount Lookout was not a profitable colliery operation by itself?—A. I did.

Q. At the time of the purchase by The Temple Iron Company?—A. I did.

Q. Can you tell us the reason for that, whether it was a temporary one or whether it could not be reasonably expected to pay in the future?—A. I think it was a temporary one.

Q. Due to what?—A. Physical conditions largely, but also the misfortunes which seemed to always attend that operation. The upper veins—the top veins—had become exhausted more rapidly than they had anticipated, and mining the lower and thinner veins increased the expense; but very largely, I think, to the ill luck, you might call it. The breaker has been burned down twice and partially blown down once, and the mines were nearly lost by the breaking of the quicksand into them.

Q. Which flooded them?—A. Which flooded them in part, and you will recall the disaster of the 12th of last May, the gas explosion, in which so many men were injured. But we have been gradually getting that place into shape, so I am in hopes to make it a profitable operation within a year or two.

Q. What, if you know, was the reasonable expectancy from the viewpoint of an individual operator as to the Mount Lookout in 1898?—A. I should say it was fairly good.

Q. Can you give me any approximation as to the cost of the construction of the breakers at the collieries that were acquired by those associated with Simpson & Watkins and themselves after your going into their service, each by itself; and when I say cost of breakers, I do not mean to stop at that, I also want to include cost of opening

and developing the interior workings. I do not mean exactly, but can you give me the range within which the figures could be fairly placed?—A. For each one?

Q. Yes.—A. I am unable to do that.

Q. As to Mount Lookout, can you recall what figures would represent the cost of opening and developing that operation?—A. Yes; there are good reasons why I should.

Q. Give it to me, please.—A. The territory there is very uncertain. There are about 100 feet of quicksand there, and it is a great problem how to get a shaft down through that quicksand. It was finally contracted to be done by the freezing process. The engineers decided on that, and the contractors drove their pipes to the rock and lost the shaft, lost all of their work; lost $100,000 on that. Then they sank another shaft. It cost $200,000 at Mount Lookout to get to the rock. I should say it took another $100,000 to develop the mine itself sufficiently to get any kind of an output of coal from it. The breaker itself, with its machinery, must have cost in the neighborhood of $80,000. That same breaker would cost nearly twice as much to-day, I might add.

Q. Owing to what?—A. Owing to the increased price of material and the labor, and the inefficiency of labor, and also because the machinery is more complicated. It takes more of it.

Q. For modern preparation?—A. For modern preparation.

Q. Have you now covered your recollection as to the cost of opening and developing Mount Lookout?—A. No; there were the outside buildings, the steam plant and the various houses necessary, barns for the mules and supply houses for the care of the supplies, of which a large quantity had to be carried. I should think Mount Lookout would cost $750,000 or $800,000 altogether to get it going in good shape; but that is an uncommon cost for a breaker of that size, on account of the difficulties that were experienced there.

Q. What would you say would be the common cost of construction in, say, 1898 of such breakers as would represent those controlled by Simpson & Watkins? I am not confining it to the breakers alone, I mean the opening and developing of the mine.—A. I should say from $300,000 to $500,000 for a 1,000-ton breaker, 1,500-ton breaker. It depends altogether on the location, whether it is on a level surface or on the side of a mountain.

Q. When you say 1,500-ton breaker, you mean for what length of time?—A. Per day.

Q. All these properties in 1898, or rather the companies controlling them, had leases to run for a long term of years, did they not?—A. They did.

Q. And they had a large tonnage of coal in the ground?—A. Very large.

Q. In 1898 and 1899 what was your personal work for the coal companies controlled by Simpson & Watkins?—A. Practically the head bookkeeper.

Q. In charge of all their accounts, were you not?—A. Yes.

Q. In other words, you were the chief accountant for the various coal companies in which Simpson & Watkins were interested at that date?—A. That is correct.

Q. Do you happen to recall, at or about the fore part of 1899, the presence in Scranton of a Mr. Luther, then the superintendent of The Philadelphia and Reading Coal and Iron Company properties in Schuylkill County, and of Mr. May, then the manager of the Hillside Coal and Iron Company and the Pennsylvania Coal Company, and of Mr. Lathrop, then in charge of the operations of The Lehigh Valley Coal Company, investigating the properties of Simpson & Watkins?—A. I heard of it afterwards. I know nothing about this matter until it had been consummated.

Q. Afterwards you heard of their being there?—A. I did.

Q. And making an investigation?—A. I did.

Q. Prior to the purchase by The Temple Iron Company of these properties?—A. I did.

Q. There was involved in this purchase what corporations, if you know, in which Simpson & Watkins were interested? Name them in detail.—A. The Northwest Coal Company; the Edgerton Coal Company; the Hendrick Land Company; the Sterrick Creek Coal Company; the four-fifths interest in the Lackawanna Coal Company (Limited); the Blakley Water Company; the Babylon Coal Company; the Mount Lookout Coal Company; the Wyoming Land Company; the Wyoming Electric Light and Power Company; and the Forty Fort Coal Company. I think that covers it.

Q. You said that the Northwest Coal Company (Limited) was the concern which controlled the Northwest colliery in its first years. Was that afterwards changed into a corporation under our Pennsylvania laws?—A. It was.

Q. Is that true also of the Edgerton Coal Company (Limited)?—A. It is.

Q. So that the one became the Northwest Coal Company and the other the Edgerton Coal Company prior to 1898; is not that right?—A. That is correct.

Q. The Wyoming Land Company; is that a corporation organized under the laws of the State of Pennsylvania?—A. It was.

Q. And its business was what in 1898? It was a land company, was it not a real-estate company?—A. Yes; I will have to explain that in my own way. That was a piece of coal—the surface was not included in this property—it was a piece of coal that was owned by the Pennsylvania Coal Company which was very desirable for the Mount Lookout Coal Company to have, but, for some reason best known to the Pennsylvania Coal Company they refused to either lease it or sell it to the Mount Lookout Coal Company. So Simpson & Watkins organized the Wyoming Land Company for the purchase of this coal and bought it on a long-term payment.

Q. Bought it in fee?—A. Bought it in fee from the Pennsylvania Coal Company on a long-time term payment, with the understanding that the royalties from this coal were to apply on the purchase money

and the interest, the idea being that when it was paid for it was to be turned over to the Mount Lookout Coal Company in fee simple, and that Simpson & Watkins were not to derive any profit from it. That was what happened. The coal was leased then to the Mount Lookout Coal Company, the royalty paid the same as any other royalty, and the royalty was applied to the liquidation of the debt; and as soon as that was consummated the balance of the coal was deeded to the Mount Lookout Coal Company and the Wyoming Land Company.

Q. But all this occurred after the purchase by The Temple Iron Company of the Wyoming Land Company, did it not—that is, the dissolution?—A. Yes.

Q. Why was it desirable for the Mount Lookout Coal Company to acquire the lands which ultimately were purchased by the Wyoming Land Company from the Pennsylvania Coal Company?—A. It added a very large amount of high-class tonnage to the colliery.

Q. How close to the leased lands of the Mount Lookout were situated these lands of the Wyoming Land Company?—A. Contiguously.

Q. Did that consideration represent a large figure?—A. It did.

Q. Can you tell us what figure?—A. Without the interest, $131,500.

Q. The Wyoming Electric Light Company; was that a corporation under the laws of Pennsylvania?—A. It was.

Q. Can you tell us when it was organized?—A. I can not. We did not organize it.

Q. Was it prior to the purchase by The Temple Iron Company?—A. Oh, yes.

Q. Long before that?—A. Oh, yes; long before that.

Q. Some years?—A. Some years; yes.

Q. What was its business in 1898?—A. Supplying light to the two boroughs, Wyoming and West Wyoming, the boroughs in which the colliery is situated.

Q. Those boroughs are what in the way of population?—A. I should say altogether about 5,000.

Q. That company was acquired, or rather its stock, by The Temple Iron Company; was it not?—A. It was acquired by Simpson & Watkins.

Q. And turned over, as a part of this deal, at the time of the acquisition by The Temple Iron Company?—A. That is correct.

Q. That light is manufactured by what material?—A. By the plant of the Mount Lookout Coal Company. We have our own light and power plant at the colliery.

Q. What class of material is used to manufacture the electric light which the Wyoming Electric Light Company furnishes to the Mount Lookout Coal Company and to these two boroughs? Is it stove coal, or what is it? What is the material?—A. No; it is colliery refuse mostly.

Q. So that it is a very economical operation to manufacture the electric light?—A. Absolutely, there.

Q. It is profitable; is it not?—A. It certainly is, in a small way.

Q. You remember that has been operated ever since the acquisition by The Temple Iron Company?—A. There has been no cessation of its operation.

Q. Do you remember its capital?—A. $5,000.

Q. Do you know what the cost of its buildings and plant represent in figures?—A. I do not.

Q. Several thousand dollars?—A. Its proportion of the plant. Part is Mount Lookout and part is this; the same plant.

Q. Would it represent several thousand dollars?—A. I should say so; if not more.

Q. The Hendrick Land Company, is that a corporation of the State of Pennsylvania?—A. It was a limited company.

Q. Is it not a corporation? In this contract at the time of the transfer it is called the Hendrick Land Company?—A. I can not recall that it was ever made into a corporation.

Q. It was originally a limited company at any rate; was it?—A. Yes; I think it is yet, in spite of that. In fact, I know it is.

Q. A limited copartnership association, under our laws—and I take it you are sufficiently familiar with them, as you know of the old Northwest (Limited) and the Edgerton (Limited) and these other companies, limited—is a sort of quasi-corporation; is it not?—A. It is.

Q. That is to say, it has "managers," so called, and issues stock, and these managers control its operation and, practically speaking, it is managed along similar lines to a regular incorporated company; is not that right?—A. Yes; that is correct.

Q. Was the Hendrick Land Company in existence in 1898?—A. It was.

Q. Where was its property?—A. Near the Edgerton colliery.

Q. What did it consist of?—A. Quite a large quantity of coal contributary to the Edgerton colliery.

Q. In what way did it utilize its property at that time?—A. It delivered its coal to the Edgerton colliery, sold it on a royalty.

Q. In other words, leased its coal to the Edgerton Coal Company?—A. Yes.

Q. If you know, what was the consideration paid by The Temple Iron Company for all of the stock of these seven coal companies, four-fifths interest in the stock of the Lackawanna Coal Company (Limited), and all the stock of the Wyoming Land Company, the Wyoming Electric Light Company, and the Hendrick Land Company?—A. That is a matter of record in the contracts. I can not remember the figures.

Q. It was part cash, part beneficial certificates in the stock of The Temple Iron Company, and part bonds of The Temple Iron Company, was it not?—A. That is correct.

Q. Was not the amount of cash that was paid, $2,750,000?—A. That is correct.

Q. The beneficial certificates in the stock of The Temple Iron Company, the legal title to which was vested in the Guaranty Trust Company, amounted to $1,000,000?—A. That is right.

Q. And the bonds of The Temple Iron Company, $1,250,000?—A. That is right. That is what Simpson & Watkins got.

Q. Making $5,000,000 in all?—A. That is correct.

Q. You say that is what Simpson & Watkins got. Is it not a fact that that is not what they got, but what they and their associates in the ownership of the capital stock of these various companies got?—A. That is correct, of course. I spoke in a general way.

Q. Is it not true that there were minority interests in some, if not all, of those coal companies?—A. In all of them, I think, with the exception of Edgerton.

Q. Being familiar with the accounts, as you were the chief accountant, and with the physical conditions of the property, having had practical experience at Northwest and other places in connection with the practical side of mining and preparing coal, what have you to say as to the reasonableness or otherwise of this price, this consideration, that was paid by The Temple Iron Company for the acquisition of those various stocks?—A. I think it was too cheap.

Q. It is certainly fair to say, then, that it was a fair and not a high price that was paid for these companies by The Temple Iron Company, is it not?—A. It certainly is.

Q. I am speaking now as of that date?—A. At that time.

Q. And the conditions as they then were?—A. Absolutely.

Q. Although that contract was entered into in the latter part of February, 1899, as appears by the exhibits attached to the answer of The Temple Iron Company, it was to date as of what date?—A. January 1, 1899. I would like to correct some of my testimony on that point. I said I was employed by The Temple Iron Company January 1, 1899. It was later, of course.

Q. In other words, you mean to correct your statement by saying you were employed by The Temple Iron Company after The Temple Iron Company acquired the property?—A. That is the idea; yes, sir.

Q. Do you know how much tonnage, if any, these various coal companies had, say, as of January 1, 1899, that was not under contract, either by lease or by a sales contract, to be delivered to certain companies; or, to put it in another way, do you know what, if any, coal that they had that has been referred to here by some of the government's witnesses as free coal?—A. I can not see where there was very much.

Q. That means what, when you translate it?—A. There might have been a little free coal at Lackawanna colliery, but that is all I can now recall.

Q. Which is the colliery as you said in which they only had a four-fifth interest?—A. Four-fifth interest?

Q. Do you remember that certain of the companies controlled by Simpson & Watkins had bond issues outstanding, representing a part of the cost of the development of those properties?—A. I do.

Q. Can you tell us which ones and the amounts?—A. I can tell you which ones, I guess, but I can not recall the amounts.

Q. Which ones?—A. The Babylon Coal Company, Mount Lookout Coal Company, and the Forty Fort Coal Company. That is my recollection of it.

Q. In the deal for the transfer of these stocks to The Temple Iron Company, were Simpson & Watkins obligated to provide for the taking up of those various underlying bond issues?—A. They were.

Q. Also, was there a bond given to protect The Temple Iron Company as against certain claims by lessors and others in litigation, or contemplated litigation, in connection with the Lackawanna Coal Company's land?—A. There was.

Q. Do you know whether Simpson & Watkins alone, or with those associated with them, have, since the acquisition by The Temple Iron Company of the property, extinguished all those bond issues?—A. They have.

Q. So that they have made good as to their contracts, then, in that regard?—A. Yes.

Q. The Lackawanna Coal Company's (Limited) matters are still in litigation, are they not?—A. They are.

Q. So that that bond is still maintained by The Temple Iron Company to protect it as against such claims?—A. It is.

Q. Do you know who signed the bond to protect The Temple Iron Company as against the underlying issue of bonds in these companies?—A. I can not recall.

Q. Do you know the amount of it?—A. I do not; no.

Q. It was ample to cover the bond issue, with interest?—A. Ample.

Q. Do you remember the amount of bonds they gave to protect against the litigation affecting the Lackawanna Coal Company's properties? Fifty thousand dollars, was it not?—A. I think that is right.

Q. Did you place at the disposal of the counsel for the Government the books containing all the minutes of the stockholders, of the directors, and of the executive committee of The Temple Iron Company?—A. I did.

Q. Did those books go back to the date of the original organization of the company?—A. They did.

Q. And come continuously down to the present time?—A. They do.

Q. Are there any other books or records disclosing any of the actions of The Temple Iron Company that you have not placed at the Government's disposal?—A. None at all.

Q. Counsel for the Government examined them for a matter of a couple of hours in Philadelphia the day before you were examined on the stand with reference to their contents, did he not?—A. He did.

Q. Will you turn, please, to book No. 1, the first book the Government asked you some questions about in Philadelphia?—A. Yes, sir [referring to minute book].

Q. It appears from this book, does it not, that The Temple Iron Company is a corporation organized under the laws of the State of Pennsylvania, the charter and letters patent being incorporated in the first few pages of the first record book of the company, and organized on the 22d of March, 1873; is not that right?—A. That is correct.

Q. The company apparently met for the purposes of affecting an organization under the charter so acquired on Saturday, March 22, 1873; is not that right?—A. They did, apparently.

Q. I show you the minutes of that meeting, attested by Mr. McHose, the secretary. The minutes then show meetings of the company at different dates following that, by stockholders and directors, covering a long series of years, do they not?—A. They do.

Q. You find that Mr. George F. Baer was a director of that company at least as early as March 20, 1880, do you not?—A. I do.

Q. I show you the minutes of that meeting and call your attention to the fact that its membership included Mr. Baer, who indeed acted as secretary at a meeting of July 17, 1880, in the city of Reading.—A. That is right.

Q. The Temple Iron Company, since you have had knowledge of its affairs, has had two departments, has it not?—A. It has.

Q. The coal department and the iron department?—A. That is correct.

Q. Who is the gentleman in charge of the iron department of the company?—A. Albert Broden.

Q. Have you any personal association with that branch of its business?—A. None at all.

Q. Who has charge of its coal department?—A. I have.

Q. Since what date?—A. Since about the 1st of March, 1903.

Q. So that, although your official title is vice-president and treasurer, you are practically the general manager of the coal department of the company?—A. That is what it amounts to.

Q. Do you know the property which the company had, say, January 1, 1899?—A. I do not.

Q. Do you know whether it had property and was a going concern?—A. I was so informed.

Q. I want you to look at the minutes that you produced here at the request of the government counsel and tell me whether you do not find as a fact that it was a company doing business, directed by a board of directors whose meetings are here before you; that it had its annual reports presented to its stockholders, and that it was transacting business as a going concern?—A. Yes, sir; I should say so very decidedly.

Q. And had properties, iron furnace or furnaces, as a part of its plant?—A. It did.

Q. And manufactured pig iron, if nothing else?—A. Undoubtedly.

Q. I call your attention to the minutes of the annual meeting of the stockholders, held at Reading, March 20, 1897, book 1, page 120. A statement there appears, a sort of a balance sheet of the affairs of

the company, I assume—in fact, it is stated—for the previous year, the balance sheet being dated as of February 28, 1897. You find among the assets bills receivable from the Reading Iron Company, $21,000, do you not?—A. I do.

Q. And you find materials and supplies on hand—iron ore, coal, coke, and limestone—do you not?—A. I do.

Q. So that that company, in connection with its business prior to the acquisition of the coal companies controlled by Simpson & Watkins, utilized in connection with its manufacturing business both coal and coke, as appeared by these balance sheets in these books. Is not that right?—A. That is correct.

Q. I show you the minute of the annual meeting of the stockholders, March 18, 1898, page 123, containing the balance sheets showing the operations of the company during the year prior to that date, and, among the personal assets, I ask you if you do not find at the bottom of the page enumerated among materials a certain quantity of iron ore, limestone, and coal on hand?—A. I do.

Q. If I remember correctly, the counsel for the Government asked you to read into the record the minutes which provided for and authorized the increase of its capital stock to two millions and a half. Do you recall that?—A. I do not recall that; no, sir.

Q. Calling your attention to page 126 of minute book 1, being the minutes of the board of directors held at Reading, January 25, 1899, present George F. Baer, president, and Messrs. Bentley H. Smith, F. C. Smink, and Albert Broden, directors, and T. O. Yarington, jr., secretary. Among the minutes of that meeting is a resolution, upon page 126. You please see if I read it correctly. "*Resolved*, That a meeting of the stockholders of the company be held on Thursday, the 26th day of January, 1899, at 2 o'clock p. m., the notice required by law being waived by the unanimous consent of the stockholders, to take action to accept the provisions of the constitution of the State of Pennsylvania, adopted December 16, 1873, and the provisions of the act of the 29th of April, 1874, entitled 'An act to provide for the incorporation and regulation of certain corporations,' and its several supplements, for the purpose of acquiring all the privileges, immunities, and franchises of corporations of the second class, for the purpose of the manufacture of iron or steel, or both, or of any other metal or any article of commerce from metal or wood, or both; to take action on the approval or disapproval of the proposed increase of the capital stock of said company from $2,500,000 to $2,500,000, and to change the par value of said stock from $50 to $100 a share." Have I read the resolution correctly as it appears on the minutes of the record?—A. You have.

Q. You find in the minutes of the same meeting, do you not, at the bottom of page 127, the selection of judges to conduct the election of the stockholders for the purpose of complying with the resolution which I have just read to you?—A. I do.

Q. Next follows, upon page 28, a stockholders' meeting under date of January 26, 1899, at which appears to have been present all of the

stockholders or the holders of all the shares of the stock, and at which Mr. Baer acted as chairman and Mr. Yarington as secretary. Certain resolutions appear upon page 129, to which I call your attention. Please see if I read them correctly: "Resolved that the corporation accepts the provisions of the constitution of the State, adopted December 16, 1873, and the president and secretary are hereby authorized and directed to make, under the seal of the corporation, and to file in the office of the secretary of the commonwealth the certificate required by the law for the purpose aforesaid. Resolved that, in accordance with the provisions of the act of the 29th April, 1874, and its supplements, this corporation accepts the provisions of said act, entitled 'An act to provide for the incorporation and regulation of certain corporations,' and its several supplements, for the purpose of acquiring all the privileges, immunities, and franchises of corporations of the second class, for the purpose of the manufacture of iron or steel, or both, or of any other metal or any article of commerce from metal or wood, or both. Resolved that the name shall be The Temple Iron Company and the capital stock shall be $2,500,000, divided into 25,000 shares of the par value of $100 each. Resolved that the president and secretary be authorized and directed to make, under the seal of the corporation, the necessary certificate required by the act of assembly and file the same with the secretary of the commonwealth, for the purpose of having letters patent issued to said corporation." I have read those resolutions correctly from the minutes, have I not?—A. You have.

Q. You note that all of the stock voted unanimously for the adoption of those resolutions?—A. I do.

Q. The waivers of the sixty days' notice provided by the constitution in connection with such matters appear here in extenso on the minutes on pages 131 and 132, do they not?—A. They do.

Q. Then follows the report of the judges on pages 133, 4, and 5?—A. That is right.

Q. The return of the judges on page 136? Then come the minutes which the Government counsel offered, page 137 of this book, contemplating the acquisition of the properties controlled by Simpson & Watkins and of the assignment and transfer to The Temple Iron Company of all the capital stock, assets, and property of certain designated corporations?—A. That is correct.

Q. Upon page 138, naming the seven coal companies they owned all the stock of, the limited company of which they own four-fifths of the stock, and the Wyoming Land Company, the Wyoming Electric Light Company, and the Hendrick Land Company; is that correct?—A. That is correct.

Q. I now call your attention to a minute upon page 139, it being a meeting of the board of directors, Mr. Baer, the president, presiding. I note it says here—you will correct me if I do not read it accurately: "The president submitted the following draft agreement between The Temple Iron Company, the Guaranty Trust Company of New York, and the Reading Company." That agreement does

not appear in extenso here; is not that right? It just refers to it, does it not?—A. That is all.

Q. And then does not follow this resolution: "*Resolved*, That The Temple Iron Company, in consideration of the Reading Company guaranteeing 29.96 per cent of an issue of $3,500,000 of The Temple Iron Company 4 per cent bonds (as in said agreement stipulated) agrees to keep and observe all the covenants in said agreement on its part to be kept and observed: *Resolved*, That the president and secretary be, and they are hereby, directed and authorized on its behalf and under the corporate seal and in the form now submitted, to execute and deliver the said agreement." That is correct?—A. Yes, sir.

Q. Next appears draft agreement between The Temple Iron Company, the Guaranty Trust Company, and the Lehigh Valley Railroad Company; the resoltion as to which states that the Lehigh Valley Railroad Company are to guarantee 22.88 per cent of this proposed issue of $3,500,000 of The Temple Iron Company bonds; is that correct?—A. Yes, sir.

Q. And the same resolution follows as to the authority of the executive officials of The Temple Iron Company to enter into a contract binding it so far as these covenant obligations are concerned; is that right?—A. Yes, sir.

Q. Reference is made to a draft of an agreement between The Temple Iron Company, the Guaranty Trust Company, and The Central Railroad Company of New Jersey, similar in form to the two preceding, except that The Central Railroad of New Jersey guarantees 17.12 per cent of this proposed issue of $3,500,000 of bonds?—A. That is correct.

Q. With a similar resolution as to the execution on behalf of The Temple Iron Company by its executive officers of the contract under its corporate seal, to which it is a party; is that right?—A. That is correct.

Q. Reference is made to a draft of an agreement between The Temple Iron Company, the Guaranty Trust Company, and the Delaware, Lackawanna and Western Railroad Company, with similar resolutions following, except that the Delaware, Lackawanna and Western Railroad Company guarantees 19.52 per cent of this proposed issue of $3,500,000 of bonds?—A. That is correct.

Q. The next one is between The Temple Iron Company, the Guaranty Trust Company, and the Erie Railroad Company, similar in form other than that the Erie Railroad are to guarantee 5.84 per cent of this proposed issue of $3,500,000 of bonds?—A. That is correct.

Q. The next, the same parties except that The New York, Susquehanna and Western Railroad Company is the third party and its guarantee is, in figures, 4.68 per cent of this proposed issue of $3,500,000 of bonds?—A. That is correct.

Q. I call your attention next to minutes of a meeting of the directors, page 142 and following pages, held at Reading March 6, 1899, at which Mr. Baer, the president, presides, and the president an-

nounces to the directors the purchase of the stocks representing coal and other properties enumerated in the agreement of the 27th of February, 1899, between The Temple Iron Company and Simpson & Watkins; that the purchase had been concluded, the stocks delivered to The Temple Iron Company by Simpson & Watkins, and that the stocks had been deposited with the Guaranty Trust Company of New York, the trustee under the collateral trust mortgage of The Temple Iron Company, as per receipt dated March 3, 1899, of that company submitted to the meeting. Is that a correct statement of the minute?—A. That is correct.

Q. That is a fact, is it not?—A. It is a fact.

Q. I also call your attention to the minute noting that the president reported an agreement had been executed between Simpson & Watkins and the Guaranty Trust Company of New York, approved by The Temple Iron Company, whereby $200,000 of the bonds of The Temple Iron Company to be issued to Simpson & Watkins, under the agreement between them and The Temple Iron Company bearing date of the 27th of February, 1899, by which they transferred this property to The Temple Iron Company, "should, so soon as issued, be retained and deposited with the Guaranty Trust Company of New York, trustee, to indemnify The Temple Iron Company against the mortgage of the Wyoming Valley Coal Company to the Fidelity Insurance Trust and Safe Deposit Company of Philadelphia, dated the 30th of June, 1887, to secure bonds to the amount of $200,000." Have I read that correctly?—A. You have read that correctly.

Q. That as an actual fact was done, was it not?—A. It was.

Q. At this meeting you note a minute, do you not, of the election of Mr. Thomas H. Watkins as a director to fill a vacancy in the board caused by the death of Colonel Smith? Is not that right?—A. That is correct.

Q. Mr. Baer resigned as president and his resignation was accepted and Mr. Watkins elected president of the company?—A. That is correct.

Q. That is the fact after the transaction?—A. That is a fact.

Q. Mr. Baer was elected vice-president?—A. That is correct.

Q. Do you know as a fact whether, after the increase of the capital from $240,000 to $2,500,000, there was ever further or other increase of the capital of the company?—A. No; no further. The capital remains the same.

Q. That is its capital to-day?—A. That is its capital to-day—$2,500,000.

Q. You have stated that they delivered, through the Guaranty Trust Company's agency, as the trustee, to Simpson & Watkins and their associates, the bonds of the company to the amount of $1,250,000, have you not? You said that this morning, did you not?—A. Yes, sir.

Q. Do you know what the total bond issue of The Temple Iron Company was, either at that time or since?—A. Four million dollars.

Three million five hundred thousand dollars originally and $500,000 later.

Q. The $500,000 later issue of bonds was for what purpose?—A. Mainly for the purpose of a lease for the Sterrick Creek; partially for the completion of a new breaker constructed at Forty Fort. About $400,000, I think, was used for the purchase of the lease.

Q. Is not this the fact, that what was done with the $400,000 was to buy out the undivided interest in a lease under which the Sterrick Creek property was being operated, which undivided interest was owned by John J. Albright and some other person?—A. William T. Smith; that is correct.

Q. In other words, to buy their interest in fee in the lands theretofore leased to that coal company?—A. That is correct.

Q. On March 18, 1899, a meeting of the stockholders was held, as appears by the book, pages 146 and following; is that right?—A. That is correct.

Q. At that time the chairman stated that the purpose of the meeting was to approve or disapprove of the proposed increase of the indebtedness of the company to the amount of $2,500,000; is not that right?—A. That is correct.

Q. The waiver of the sixty days' notice under our constitution follows in the minute, does it not?—A. It does.

Q. The judges of the proposed election record their oath and conduct the election and their return appears, and there is a unanimous increase, all stockholders voting, the total issue at that time being, and now for that matter, being 25,000 shares; is that right?—A. That is right.

Q. The contracts that were executed in connection with this acquisition by The Temple Iron Company of the properties controlled by Simpson & Watkins are not in your possession, are they?—A. Which contracts do you refer to?

Q. The contracts between the Guaranty Trust Company, The Temple Iron Company, and the Reading Company; that is one of them; the collateral trust mortgage is another one.—A. They are not and never have been.

Q. Do you know where they are?—A. I think they are in Mr. Baer's possession. I am not positive as to that.

Q. Have you examined the copies of them attached to our answer in this case, so as to tell us whether they are correct copies of those contracts?—A. As I never saw the originals, I would have to take it for granted that they are.

Q. You do not know as a fact?—A. I do not know.

Q. You have already said that Mr. Watkins acted as president from the date to which I have called your attention from the minute book down to a date which you gave as the early part of 1901; did you not?—A. December.

Q. Of 1901?—A. December, 1900.

Q. And Mr. Baer, who had theretofore been vice-president, was thereupon elected president?—A. He was.

Q. And has been president ever since?—A. He has.

Q. The counsel for the Government asked you to read a minute showing the election of Mr. Olyphant as a director of The Temple Iron Company; do you recall that?—A. I do.

Q. Will you turn, please, to the minutes of the directors' meeting of December 2, 1902. As I remember it, you testified in Philadelphia that he was elected a director in about February of that same year, 1902?—A. That was my recollection.

Q. And you read the minute as of that date?—A. Yes.

Q. Now turn to the minute of December 2, 1902, of the directors. Have you the minute?—A. I have it.

Q. You acted as secretary at that meeting of the board?—A. Undoubtedly.

Q. That is your signature?—A. Yes.

Q. It is all in your handwriting, for that matter?—A. Yes; it is.

Q. Will you read, please, the minute starting with "the resignation of?"—A. "The resignation of Mr. R. M. Olyphant as a director of The Temple Iron Company was presented and on motion accepted."

Q. Having read that resolution, you now recall, do you not, that Mr. Olyphant ceased to be a director after December 2, 1902?—A. Yes.

Q. In other words, he retired on that date as a director?—A. Yes; undoubtedly.

Q. And has never been a director since?—A. No.

Q. And has had no association with the company or its management in any way, so far as you know?—A. Absolutely none, so far as I know.

Q. You remember, do you not, that at the time or shortly after the acquisition by The Temple Iron Company of the Simpson & Watkins properties, under the written agreement with the Guaranty Trust Company, it held the legal title to practically all the stock of The Temple Iron Company, but there were beneficial certificates issued, commonly called certificates of interest?—A. That is true.

Q. Have you with you any memorandum that can give us an idea of the distribution of those certificates of interest?—A. I have.

Q. Let us have that, will you, please?—A. (Producing statement.) This is a statement that I had made sometime ago, probably two or three years ago. I had no record in my office and I sent a man to the Guaranty Trust Company to get that statement.

Q. How were those certificates of interest distributed through the country?—A. I should say they were scattered all over the country, very largely in the New England States, according to my recollection.

Q. And in small or large amounts, speaking generally, as to the holdings?—A. Small amounts, generally.

Q. The summary shows certain facts with reference to the holdings and the amounts, and the States in which the holders resided, does it not?—A. It does.

Q. Is this a correct statement of the situation following the purchase by The Temple Iron Company of these properties and of the distribution of the certificates of interest?—A. That is the way the record stood, I think, in the latter part of 1906. Those certificates were negotiable and changed hands.

Q. I wish you would read the summaries.—A. (1) Pennsylvania:

	Shares.
2 holders of 5 shares each	10
4 holders of 10 shares each	40
1 holder of 14 shares	14
1 holder of 15 shares	15
1 holder of 25 shares	25
4 holders of 27 shares each	108
1 holder of 30 shares	30
1 holder of 38 shares	38
1 holder of 49 shares	49
2 holders of 50 shares each	100
1 holder of 68 shares	68
1 holder of 80 shares	80
1 holder of 100 shares	100
1 holder of 150 shares	150
1 holder of 190 shares	190
1 holder of 200 shares	200
2 holders of 500 shares each	1,000
1 holder of 2,831 shares	2,831
Total	5,048

(2) New Hampshire:

2 holders of 1 share each	2
7 holders of 2 shares each	14
2 holders of 3 shares each	6
1 holder of 4 shares	4
12 holders of 5 shares each	60
2 holders of 7 shares each	14
2 holders of 8 shares each	16
22 holders of 10 shares each	220
1 holder of 11 shares	11
6 holders of 15 shares each	90
4 holders of 20 shares each	80
1 holder of 22 shares	22
2 holders of 25 shares each	50
2 holders of 30 shares each	60
2 holders of 50 shares each	100
3 holders of 100 shares each	300
1 holder of 140 shares	140
1 holder of 200 shares	200
Total	1,389

(3) Connecticut:

1 holder of 5 shares	5
3 holders of 10 shares each	30
1 holder of 20 shares	20
3 holders of 22 shares each	66
1 holder of 25 shares	25
1 holder of 34 shares	34
4 holders of 50 shares each	200
1 holder of 100 shares	100
1 holder of 165 shares	165
1 holder of 200 shares	200
Total	845

(4) Massachusetts:

1 holder of 1 share	1
2 holders of 2 shares each	1
1 holder of 3 shares	3
4 holders of 4 shares each	16
2 holders of 5 shares each	10
1 holder of 9 shares	9
5 holders of 10 shares each	50
1 holder of 11 shares	11
3 holders of 13 shares each	39
1 holder of 15 shares	15
2 holders of 20 shares each	40
1 holder of 25 shares	25
3 holders of 30 shares each	90
1 holder of 33 shares	33
1 holder of 35 shares	35
1 holder of 36 shares	36
2 holders of 40 shares each	80
2 holders of 50 shares each	100
1 holder of 75 shares	75
4 holders of 100 shares each	400
1 holder of 150 shares	150
Total	1,222

(5) New York:

7 holders of 5 shares each	35
1 holder of 7 shares	7
9 holders of 10 shares each	90
1 holder of 11 shares	11
1 holder of 16 shares	16
1 holder of 20 shares	20
3 holders of 25 shares each	75
3 holders of 30 shares each	90
1 holder of 48 shares	48
1 holder of 55 shares	55
1 holder of 60 shares	60
1 holder of 76 shares	76
1 holder of 78 shares	78
5 holders of 100 shares each	500
1 holder of 200 shares	200
1 holder of 442 shares	442
1 holder of 500 shares	500
1 holder of 700 shares	700
1 holder of 884 shares	884
1 holder of 1,000 shares	1,000
1 holder of 1,106 shares	1,106
2 holders of 2,212 shares each	4,424
1 holder of 4,390 shares	4,390
Total	14,807

(6) Maine:

2 holders of 5 shares each	10
2 holders of 10 shares each	20
Total	30

(7) Staten Island:

1 holder of 25 shares	25
Total	25

(8) Rhode Island:

6 holders of 10 shares each	60
1 holder of 12 shares	12
3 holders of 13 shares each	39
1 holder of 18 shares	18
3 holders of 20 shares each	60
3 holders of 25 shares each	75
1 holder of 40 shares	40
1 holder of 45 shares	45
4 holders of 50 shares each	200
1 holder of 60 shares	60
6 holders of 100 shares each	600
1 holder of 130 shares	130
1 holder of 250 shares	250
Total	1,589

(9) Vermont:

3 holders of 5 shares each	15
1 holder of 10 shares	10
1 holder of 20 shares	20
Total	45

(At 1.20 p. m. a recess was taken until 2.30 p. m.)

Q. Having given the summary of the holdings of the certificates of beneficial interest, as I call them, in the various States and in the number of shares held by different persons, without naming them, you recall that Mr. T. P. Fowler was the owner of certain certificates of beneficial interest?—A. My recollection is that he was.

Q. That summary discloses the situation as of dates at least prior to December, 1906, does it not?—A. About that time—December, I think.

Q. You are sufficiently familiar with the contracts as between the guaranteeing railroads and the Guaranty Trust Company and the collateral trust mortgage and the agreement as to the duties and obligations of the trustee recited in that mortgage, I assume, to tell us the terms under which the Reading Company, for instance, acquired its large holding of the certificates of beneficial interest a matter of a couple of years or so after the acquisition of these properties? If so, please tell us.—A. My understanding of the matter was that the Reading Company desired to own the stock, its proportion of the stock, and that it surrendered its certificates of beneficial interest and took the stock up a couple of years prior to the date you mentioned, December 31, 1906.

Q. But my inquiry is as to how it did do that. Did the contract contemplate, in other words, that if the holders of such certificates were willing to part with them, then the guaranteeing companies could buy their holdings?—A. It was optional with them to do so.

Q. At what time?—A. December 31, 1904, if I recollect correctly.

Q. The statement which The Temple Iron Company submitted to the counsel for the Government here shows that in June of 1907 and also in September, 1908, the Lehigh Valley Railroad Company, the Reading Company, the Delaware, Lackawanna and Western Rail-

road, and The Central Railroad of New Jersey were the holders of the stock—not the certificates of beneficial interest—but the stock of The Temple Iron Company, as to a large proportion thereof; is not that right?—A. That is correct. They held it at that time.

Q. When did they acquire the beneficial interests, if you know, from these various holders scattered through these various States?—A. December, 1906. They were collected by the trustee.

Q. Then, did the agreement with the trustee authorize and require the transfer of certificates of stock as of that date to the purchasers of certificates of beneficial interest on their surrender?—A. It was obligatory under the contract.

Q. That is to say, it was obligatory under the contract that the guaranteeing railroads should take up the certificates of beneficial interest not later than December 31, 1906?—A. That is correct.

Q. Do you remember at what figure the bonds, $3,500,000 worth of bonds of The Temple Iron Company, were sold at the time these properties were acquired?—A. Yes, sir.

Q. Tell us, please.—A. At 90 per cent.

Q. They were all sold, were they not, the $3,500,000?—A. They were all sold.

Q. That secured to the company what figure in money? The bonds being sold at 90 per cent would represent what in receipts?—A. That would be $3,150,000.

Q. $1,250,000 were given to Simpson & Watkins and the other stockholders of these various coal companies?—A. That is correct. Allow me to say that that was net at 90.

Q. What became of the proceeds of the balance of that bond issue? $2,750,000 was used to pay Simpson & Watkins and their associates cash, was it not?—A. It might not all have been the proceeds of the bonds. It might have been, some of it, the proceeds of stock. In the first place, nearly all the stock and bonds were delivered to Simpson & Watkins, to be turned over to the trustee, to be disposed of by them to pay Simpson & Watkins and to provide working capital for the company.

Q. Tell us, please, how that distribution was made, if you can remember.—A. The total indebtedness of the company in its stock and bonds was $6,000,000. Of that Simpson & Watkins had $5,000,000 net. Of the balance, about $500,000 was turned over to the company for working capital; $151,000 was paid to the owners of the original Temple Iron Company stock. The balance was made up of the discount on the bonds—about $350,000. Those are in round numbers.

Q. When you say the total indebtedness of the company was $6,000,000, you class its issue of stock as a debt, do you?—A. That is what I said. It is not properly a debt.

Q. You do not mean that in the sense of its being an issue of bonds at all?—A. I do not.

Q. What have you to say as to the necessity or otherwise of there being a working capital in connection with the operations of individual coal companies in our region?—A. To be safely conducted, a

business of that kind should have a large working capital. I have already testified, to the amusement of counsel, that mining anthracite coal is a hazardous business, and there is always a prospect of fires destroying the property, flooding of the mines, labor troubles, and then at times it is well to have money on hand to make good purchases of material.

Q. Exhibit A, attached to the answer by The Temple Iron Company, purports to show the Simpson & Watkins agreement, so called. You have seen the original of that agreement, have you not?—A. I have.

Q. Is this a true and correct copy of the original as it appears in our answer?—A. It is. That is the only one of the original agreements I have seen.

Q. You are familiar, however, with the terms of what is known as the railway agreement—that is to say, with the terms of that agreement which has to do with the obligations of The Temple Iron Company to the trustee as to a sinking fund, the way in which it was to be created and maintained; second, as to the provision for the payment of the interest on the bonds of the company; and, third, as to the provision for the securing to the trustee of a sum equal to 6 per cent upon the issue of stock of $2,500,000, to provide for the 6 per cent dividend guaranteed by the guarantor railway company, are you not?—A. I am familiar with it.

Q. That appears upon pages 26 and 27 of the answer by The Temple Iron Company to the Government's petition, or bill—that is to say, that part of this railway agreement, as it is called. You said in Philadelphia that The Temple Iron Company was not able, during certain of the earlier years of its ownership and control of the properties it acquired from Simpson & Watkins, to provide for these three items?—A. That is correct; 1901 was an exceptional year. It was 1899, 1900, and 1902.

Q. That is to say, there were three years since The Temple Iron Company acquired these properties that its net earnings were not sufficient to provide for these three items?—A. That is correct.

Q. And they were what years?—A. 1899, 1900, and 1902.

Q. Tell us, please, the occasion for the deficit in their net earnings so as to require the payment into the treasury by the guaranteeing railroad companies of the sum which you stated to Mr. McReynolds the other day?—A. About 1896 or 1897 there began a radical change in the method of preparing coal, which necessitated a change of machinery, increase in the size of the breakers and their appurtenances, and in 1899 there were some extensive improvements in The Temple Iron Company collieries projected and carried out. The larger part of the deficit, I think, in that year was occasioned in that way. We also had the strike, what we call the powder strike. I have heard it called the Hanna strike.

Q. Of what duration of time was it?—A. According to my recollection, about ten weeks. I may be mistaken about that.

Q. The powder strike was in 1900?—A. 1900. I refer to 1899 in speaking of the improvements. In 1900 we had a great many improvements—rebuilding, new machinery, and also the powder strike. In 1902, of course, we had what we call the long strike, the great strike.

Q. Which lasted how many months of that year?—A. Six or seven months—six months.

Q. After the men went back to work, which was the latter part of October in that year, was it not?—A. Yes, sir.

Q. Going out early in May that year?—A. I think the 12th of May, or 10th of May.

Q. After they went back to work the latter part of October, what length of time was required to get the properties back into any sort of effective organization for the production of coal, so as to bring it under anything like normal conditions in the way of expense and of fixed charges?—A. I should say about six months, at our places.

Q. Have you an idea of the sums expended in figures by way of betterments to mines during those three years to which you have referred?—A. Yes, sir; I have.

Q. Can you tell us the amount of expenditures made?—A. In the year 1899 there were improvements and additions, $224,433.43. For the year 1900 the improvements amounted to $147,316.39. The strike expenses for 1900 amounted to, in round numbers, $30,000 in addition to that. For the year 1902 the strike expenses amounted to $114,493.87 and $23,338.33 for rebuilding the breaker at Northwest, which had been destroyed by fire, which was in excess of the amount received from the insurance on the breaker.

Q. When was that breaker destroyed?—A. In December, 1901.

Q. Any other expenditures?—A. That is all. The total for 1902 was $234,829.62. The difference is in other construction.

Q. The trustee, then, in order to make up the three figures, the one representing the sinking fund, the second the interest on the bonds, and the third the 6 per cent guaranteed dividends on the stock, called upon the railroad companies, did it not, to make good the deficiency?—A. It did.

Q. That deficiency is the figure which you gave Mr. McReynolds, in the aggregate four hundred and eighty some odd thousand dollars, as I remember, which was advanced by the railroad companies?—A. That is correct; $483,000, in round numbers.

Q. This railway agreement, so called, I observe, calls for a sort of an estimate to be made on the 10th of June and on the 10th of December, so as to provide for the sinking fund, the semiannual payment of interest, and the declaration of the 3 per cent dividend at the end of each six months of each year. That is correct, is it not?—A. That is correct.

Q. And on the occasion of the deficiencies in net earnings by The Temple Iron Company it provides that the railroad companies will pay to the trustee a sum equal to 12½ cents from and in respect of

every ton of coal from the mines of The Temple Iron Company?—A. That is correct.

Q. In the first instance there was called, under the terms of this agreement as it appears upon page 27 of our answer to the government's bill, the supplementing by other advances of enough to make up these three various items of necessary expenditures at each six months' period from the companies transporting the coal over their railway lines?—A. That is correct.

Q. So that first call was made upon the companies who had tonnage from these various coal companies; is that right?—A. That is correct.

Q. Do you know whether in all the years there was occasion to make any other or different call under the terms of this contract upon the guaranteeing companies aside from the 12½ cents from the companies which had brought the tonnage from these colliery operations?—A. Yes.

Q. Was it necessary to make any other and different call in each one of the three years 1899, 1900, and 1902?—A. No.

Q. Which of the three, if you remember?—A. My recollection is it was 1899 and 1900. It is a matter of record.

Q. What, under the terms of the contract, was the different character of the call, aside from that one that applied only to such of the railroads as had tonnage from the collieries?—A. Any excess of the deficit over this 12½ cents per ton was participated in by all of the parties to the so-called railway agreement, according to the percentages shown in those agreements.

Q. And that sort of a call was made on the companies in two of the three years?—A. Yes.

Q. Now, you have given us all the calls and the causes for them which secured from these companies this sum of four hundred and eighty-odd thousand dollars?—A. I have.

Q. Those advances were treated and understood how by The Temple Iron Company, within your knowledge?—A. As loans, to be repaid with interest; always understood it that way.

Q. Can you recall being present at any meetings of the directors of The Temple Iron Company when any of the members of the board, presidents of any of the railway companies, made any demands for the return of their proportion of this aggregate sum of $480,000?—A. On several occasions.

Q. What of the directors—which one of the directors, if you can remember?—A. Mr. Thomas, Mr. Underwood, Mr. Truesdale, according to my recollection.

Q. Can you remember what Mr. Baer stated at those meetings was his objection, if any, to such return at the time that these demands were made?—A. I remember it very distinctly.

Q. Tell us, please, about it.—A. He put it about this way. He said, "Now, you fellows want to look at this in this light, that it is a kind of family matter. You want to remember that we have a big issue of bonds out that are redeemable at 110, and this surplus of ours

can be used to better advantage in buying these bonds and getting them out of the way. They can be bought at a reasonable price, and you fellows can wait." That is about the way he put it.

Q. In other words, he put them off?—A. He did. He would not listen to it.

Q. Can you find the record in the minutes there of authority to the president to buy bonds, outstanding obligations of the company?—A. Yes, sir; there is such a record.

Q. Will you not please find that?—A. (Referring to the minutes.) I have it.

Q. It appears in the minutes of what date?—A. Of March 21, 1905.

Q. Of what—directors or stockholders?—A. A meeting of the directors.

Q. Who was present at that meeting?—A. Mr. George F. Baer, Mr. W. H. Truesdale, Mr. E. B. Thomas, Mr. J. S. Harris, and Mr. J. R. Maxwell.

Q. Will you read the minute that has to do with that matter?—A. "The question of the retirement of the bonds of the company through the future operation of the sinking fund was discussed and, in view of the fact that the mortgage provides for a maximum price of 110 and interest, a resolution was unanimously adopted authorizing the president to purchase bonds of the company for the sinking fund from time to time at such prices as he deems advantageous."

Q. To what extent, if you know, has the president, under that authority, purchased bonds outstanding of The Temple Iron Company, and in what amount?—A. We have purchased about $1,900,000 of bonds since that resolution was adopted.

Q. That is to say, out of a total issue of $3,500,000 you have purchased almost $2,000,000?—A. That is correct.

Q. At about what figure?—A. Very little over par. Some of them at an average of a little over par. Some of the bonds were bought under par and some a little over.

Q. Is it your policy to acquire those bonds and thus extinguish the indebtedness of the company in the future?—A. It certainly is. I have been very industriously engaged in buying these bonds, looking for them all the time.

Q. What amount of the bond issue is there in the treasury of the company to-day, if you know?—A. Nine hundred and thirty-one thousand dollars of the bonds.

Q. They were secured how?—A. By the mortgage—the general mortgage.

Q. I no not mean that, but they were gotten into the treasury how; bought how from the holders?—A. From the earnings of the company—surplus.

Q. What is the surplus of the company at the present time?—A. On December 31, 1907, the books showed about a million dollars.

Q. So that it has been a very profitable business corporation, has it not?—A. Very, indeed.

Q. That sum which you state at practically $1,000,000 in the way of surplus in the treasury of the company, is that exclusive of the bonds which you have purchased?—A. It is inclusive of the bonds we have purchased, of course.

Q. Then of $1,000,000, $931,000 is in the bonds of the company which it now has in its treasury; is that right?—A. Practically. The surplus represents the net earnings over the fixed charges; from those net earnings the bonds were purchased.

Q. Aside from those three years, what have you to say as to whether the company made money in appreciable sums each year of its operation?—A. The earnings have been large for the tonnage. It is growing larger each year.

Q. Is all of its coal sold under 65 per cent written contracts to coal companies?—A. All but the 100,000 tons a year to the New York, Ontario and Western Railroad at the Northwest. That is practically a written contract; it is in the form of a letter.

Q. It is by correspondence, in writing?—A. That is correct.

Q. What have you to say, within your own knowledge, as to the examination of other properties offered to The Temple Iron Company but not taken or purchased by that company—I mean by that, when I say other property, other coal collieries?—A. Personally, I have knowledge of only one, but I understood that others were examined; heard of it after it was done.

Q. Are you referring, in reference to that of which you have heard, to investigations made by Mr. Luther and Mr. May and others as to properties of Jones, Simpson & Fowler, the Mount Pleasant and Seneca, and those properties?—A. Yes; a dozen of them altogether.

Q. You know they were not purchased?—A. I certainly do.

Q. Within your personal knowledge, have any coal properties been offered The Temple Iron Company within the last few years?—A. Yes, sir.

Q. Just tell us, please.—A. The Mount Jessup colliery and the Moosic Mountain colliery—practically the same concern; two collieries.

Q. When was that?—A. About two years ago. I negotiated that myself, examined the properties very carefully and declined to purchase them. The price was too high.

Q. Did the owners of the majority of the interests or those in charge of those companies present those properties to you for sale?—A. Absolutely.

Q. And you turned them down because of what?—A. The price was too high for the property.

Q. First making a careful examination of the property?—A. I spent six months examining them, practically. The only reason we considered the proposition at all was because the property adjoins our Sterrick Creek property and our gangways had been driven up to the boundary pillars between the two properties.

Q. So that you could have advantageously operated those properties in connection with the Sterrick Creek, could you?—A. That was the idea.

Q. The minutes of the executive committee, which have been placed at the disposal of the Government's counsel, contain a reference, do they not, to the proffer by the Moosic Mountain and Mount Jessup companies of their properties and your declination of them?—A. They do.

Q. These bonds held in the treasury of the company are, of course, available to dispose of and secure currency for, if you desire to?—A. I so understand it.

Q. So that, if it were not for the policy of the company to extinguish these bonds rather than to have the sinking fund applied to bonds at 110 in the hands of owners, there is a sufficient available asset of the company to repay the advances by the railroad companies represented by this figure of $480,000?—A. No question about it.

Q. Counsel for the Government called your attention to an Edgerton Coal Company matter and to the appointment of a committee at one of the meetings of the directors, I think, of The Temple Iron Company, to take up the question of taking the coal from that colliery at a 60 per cent basis. Do you recall that?—A. I recall that.

Q. Have you anything further to say in supplementing what you said at that time in connection with that particular transaction and the occasion for it?—A. I believe I stated that the reason for the action was because we could not dispose of the Edgerton coal on account of its being not marketable in its appearance. It was rusty, dull, and a great deal of slate and bone in it, and I told my board if they could not dispose of it in some way, I would have to get out on the line and dispose of it myself. That was something of a bluff, but they did not seem inclined to give the matter very much attention, and at this time this committee was appointed to devise some means of disposing of this coal and that was the result, that it was to be taken for supply coal in equal quantities by the four railroads named in the report of the committee.

Q. Have you had any trouble at all in getting those companies to comply with that contract, to take it at that figure?—A. All of them, the Lehigh Valley especially.

Q. In other words, they have hesitated to comply with the contract after they made it?—A. That is right. They certainly have. I have had quite a little difficulty with Mr. Thomas over that matter, Mr. Thomas especially, but they all objected to it. The coal was bad in appearance.

Q. The Edgerton property was worked out to a finality, was it not?—A. Yes; just about.

Q. You are not now shipping any coal from it?—A. We have shipped no coal from it since last December. That was washery coal.

Q. I note, however, that in our return made to the counsel for the Government, we state that we own certain coal acreages there, a small acreage it is true, but still we speak of it as part of the coal acreages of The Temple Iron Company. What is the situation as to that at the present time?—A. It is mostly crop coal and thin veins that are practically unworkable. It does not justify The Temple Iron Com-

pany in having an operation there, and these little pieces are isolated and they are sublet to some individuals who put up a small operation, what we call a penitentiary.

Q. You call it a penitentiary; that is a local term?—A. That is the local term for these little operations, mostly for supplying the surrounding towns with domestic coal—local sale. Very little of it is shipped, as I understand.

Q. But, as you still own the leases, you returned them to the Government as part of your coal acreage?—A. That is it. We get a small royalty from these isolated pieces of coal.

Q. Can you give me an approximation of the cost of opening and developing the Edgerton colliery?—A. My recollection of the matter is—it is only from the records—that the Erie Railroad advanced them $90,000 for that purpose.

Q. Did that cover all the cost incident to the opening and developing of those mines?—A. That I do not know.

Q. Can you tell me the probable life of the coal operations of The Temple Iron Company to-day?—A. Approximately; that is a difficult matter to arrive at. I should say about thirteen to fifteen years for the Northwest. Edgerton is abandoned. Thirty or thirty-five years for Sterrick Creek. Twenty to twenty-five years for Lackawanna. Twelve years, I should say, for Babylon. Forty years for Mount Lookout. Thirty-five to forty years for Harry E and Forty Fort collieries.

Q. The character of the veins now being worked and remaining in the properties to be worked out compares in what way with those originally in those properties?—A. The upper veins, the thick veins that have been mostly exhausted, were considered very good mining. The coal was high, clean, easily handled; a great deal of it was above water level—most of it—very little pumping; no roof to take down or bottom to take up. The yardage—what we call "yardage;" that is, the allowance to the men for working in thin veins and narrow coal—was very small at that time. It is now very large. I want to add to that one very important feature which I overlooked, that the thin veins are usually dirty and have a great deal of refuse in them.

Q. This condition of working in the thinner veins and the more expensive ones dates back about how many years from this year?—A. I should say about ten years.

Q. Can you give me any comparison in the cost of the equipment of breakers within the last ten years, as compared with the necessary equipment of breakers prior to that?—A. I should say nearly double in cost. I think that is a fair average.

Q. Tell me what, in a general way, is the difference in the preparation within the past ten years as compared with that prior to that time in order to meet the market demands.—A. One of the principal ones is in the washing of the coal.

Q. What do you mean by washing the coal?—A. The coal as it comes from the mines now is usually very dirty in appearance, and all of the smaller sizes, from pea down, have to be washed with water,

put in shakers or jigs and the coal separated into the finer sizes. It all has to be washed, which, of course, demands additional machinery, expensive machinery, and machinery that wears out very quickly. The acid in the mine water is very destructive not only to the machinery itself, but to the breaker, the timbers. Then there is the refuse that comes from the mines. That is greater than it has ever been before; there is a great deal of trouble with that. That has to be picked out of the coal as it passes through the breaker in the course of its manufacture.

Q. How about the efficiency of labor?—A. I have figured at that very closely for ourselves, and I believe it is about 20 per cent less than it was in 1900; 20 to 25 per cent less.

Q. How about stoppages in the breaker due to various causes, aside now from holidays and saints' days and Mitchell days; I mean, as an illustration, stoppages due to weather conditions which block the train services?—A. We have a great deal of trouble in the winter, especially when there is much snow or if it is very cold; it is difficult to move the cars about the collieries. Another point which probably would not occur to you, is that the men do not come out. The inside men are very sensitive to the weather, and in very cold weather they will not come out to work, many of them, and we are then short of coal for the breaker; the average product is not kept up.

Q. What difference is there that has grown up in the last ten years in the matter of the standardization of sizes to meet market demands, or the equalizing of sizes, if you know, to meet market demands?—A. That trouble started really long before I had anything to do with the operating department of The Temple Iron Company, but I have heard a great deal about it. It has been the source of a great deal of friction between the operators and the sales agents and the purchasers. There has been no regular standard of sizes that obtained all through the region there, which I think was largely due to stipulations in some of the leases specifying the size of mesh that should be used; but it occasioned a great deal of trouble, and there has always been a great effort to standardize and equalize the sizes.

Q. Since the 65 per cent contracts came into being, in 1901, but to date as of 1900, so far as The Temple Iron Company is concerned is there a uniform standardization within your knowledge affecting your company in its preparation of coal and a uniform equalizing of the sizes?—A. I do not understand your question.

Q. I will ask it in another way: Do you now prepare at The Temple Iron Company collieries, or the collieries of the companies it controls, coal that is to be delivered under the 65 per cent contracts, uniformly as to standardization and equalization?—A. We do not.

Q. To what extent do you not—how does it differ?—A. That I am unable to tell you. I can not put that into figures. At some places, for instance, we make from an eighth to a thirty-second difference in the chestnut to conform to the provisions of some lease, perhaps. Those are only isolated occasions when that happens, but, as a rule, our coal is practically made on the same sizes at each colliery.

Q. Is there any difference in the way in which it is now prepared, as you say, and the way it was manufactured prior to this 65 per cent contract—is there any greater uniformity in the preparation?—A. I do not think there is.

Q. Do they not prepare to a standard now more nearly than they did prior to the execution of this contract?—A. I think there has been a change in the smaller sizes. The biggest change has been in the inspection.

Q. As to the matter of inspection, do you recall the difficulties by reason of different standards of inspection at different places, and therefore a greater percentage of impurities as coming from one place as compared with that coming from another, prior to 1900, say?—A. I do.

Q. Do you now know how it works out under the terms of the 65 per cent contract as to the matter of inspection, whether greater uniformity has been secured?—A. It has been secured. It is uniform in all of our places.

Q. That is, in all of your places the per cent of impurities, practically speaking, is now uniform?—A. Uniform; yes, sir.

Q. And in accordance with that which is stated at great length in the 65 per cent contracts as allowable?—A. Precisely.

(It is stipulated that the copies of the various agreements appended to the answer of The Temple Iron Company are correct copies of the originals, so that it may be understood that they may be treated as in proof.)

Redirect examination by Mr. TODD:

Q. At the last hearing in Philadelphia you were asked to produce a list of the directors of The Temple Iron Company during each year from 1898 to 1908. On your direct examination I neglected to ask you for that list, but you have now produced it. This is it, is it not [showing list to witness]?—A. Yes, sir; that is it.

Mr. Todd offered in evidence the list marked Government Exhibit No. 156.

Q. It appears on this list that Mr. George F. Baer has been a director of The Temple Iron Company during each year from 1898 to 1908, both inclusive. What relation did Mr. Baer sustain toward the Reading system in 1898, 1899, and 1900?—A. I do not know.

Q. Is any coal shipped from The Temple Iron Company collieries over the New York, Susquehanna and Western Railroad?—A. Not to my knowledge.

Q. With respect to those certificates of beneficial interest in the stock of The Temple Iron Company, was any condition attached to them with respect to the time of their surrender?—A. There was; yes.

Q. What was that?—A. That the parties to the railway agreement, I think it is called, had the option of taking them up in proportion as they had subscribed for them at the end of 1904, and it was obligatory upon them to take them up on the 31st of December, 1906; that is, to pay for the stock and to surrender their certificates.

Q. So that it was a condition of these certificates that they had to be surrendered not later than December 21, 1906?—A. That is correct.

Q. What amount of bonds is The Temple Iron Company now authorized to issue over and above what it has actually issued?—A. Eleven million dollars.

Q. Over and above what it has issued?—A. Yes; the total authorization is $15,000,000, and $4,000,000 have been issued, of which $3,000,000, about, have been retired or are in its treasury.

Q. Do you know how the percentages of The Temple Iron Company's stock which each of these railroad companies that have been mentioned agreed to take were determined?—A. I do not. I have already testified that I knew nothing about the transaction until it was consummated. I never had any knowledge of it before or since.

Q. You never had any recollection about that which could be refreshed?—A. I never had any knowledge of it.

Q. Who was Mr. J. R. Maxwell, who appears as a director of The Temple Iron Company during the years 1900, 1901, 1902, 1903, 1904, 1905, and 1906?—A. I think Mr. Maxwell was president of the Central Railroad of New Jersey when he first came on The Temple Iron Company board. I do not at this time recall when he retired from that position.

Q. Did not Mr. Maxwell cease to be president of the Central Railroad of New Jersey some time in 1901, when the Reading Company acquired a majority interest in the stock of that company?—A. Speaking from hearsay, I should say that was about the time, but I do not recall it.

Q. Mr. Joseph S. Harris appears here as a director of The Temple Iron Company during each year from 1899 down through 1908. Who was he, do you know?—A. Mr. Harris was formerly the president of The Philadelphia and Reading Railroad Company. I think, so far as I know, his only official connection with it now is that of director.

Q. Mr. F. C. Smink appears as a director of The Temple Iron Company during a certain period. Can you tell us who he is?—A. Mr. Smink is the president of the Reading Iron Company, which is a stockholder of The Temple Iron Company.

Q. Who is Mr. Albert Broden, who appears as a director of The Temple Iron Company in certain years?—A. Mr. Albert Broden is general superintendent of the iron department and also assistant treasurer of The Temple Iron Company. He was an original stockholder of The Temple Iron Company.

Q. Who is Mr. George B. Conrad?—A. Mr. Conrad was formerly the assistant treasurer of The Temple Iron Company at Reading. He is now dead.

Q. Did I understand you to say, in answer to a question of Mr. Warren, that this committee on freight rates to outside shippers, referred to in the minutes of a meeting of the board of directors of The Temple Iron Company, held on July 2, 1901, was not in any way concerned with The Temple Iron Company?—A. I said that the matter did not concern me personally nor as an official of The

Temple Iron Company, and that probably for that reason it has passed out of my mind. It did not concern The Temple Iron Company.

Q. If you have not any recollection of this committee at all, as you have testified on your direct examination, how do you know whether it concerned The Temple Iron Company or not?—A. I judge so, because The Temple Iron Company had nothing to do with any freight rates; never has had to my knowledge.

Q. It is an inference then, is it not?—A. Oh, absolutely.

Q. Because, if you do not remember anything about that committee, it is difficult to see how you remember that it did not have any relation with The Temple Iron Company?—A. It is an inference from the record; that is all. I can not remember anything about the committee itself.

Q. You just infer, then, from the fact that The Temple Iron Company is not itself a shipper of coal, that this committee on freight rates could not have anything to do with it?—A. I should say so.

By Major WARREN:

Q. In all its history, since your connection with it, has The Temple Iron Company had anything to do in any way, shape, manner, or form with the fixing of freight rates?—A. Absolutely nothing.

By Mr. TODD:

Q. How do you know whether it did or not, if you do not know anything about this committee?—A. I will supplement my last answer by saying, not to my knowledge.

Q. It never has so far as you recall?—A. Not so far as I recall.

(Adjourned until Tuesday, December 15, 1908, at 10.30 a. m., at New York.)

Met pursuant to adjournment at New York, Tuesday, December 15, 1908—10.30 a. m.

Present: The Examiner and Messrs. McReynolds, Todd, Campbell, Warren, Moot, and Torrey.

WILLIAM GRIFFITH, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. TODD:

Q. Where is your residence?—A. My residence is West Pittston, Luzerne County, Pa. My place of business is Scranton.

Q. What is your present occupation?—A. Mining engineer and geologist.

Q. How long have you been a mining engineer and geologist?—A. Thirty years, approximately.

Q. As a mining engineer and geologist has your work had to do with the anthracite coal fields particularly?—A. Yes, sir; very largely, in the early part of it.

Q. By the "early part of it," until how recently do you mean?—A. For the last ten years possibly it has been more in connection with geology all over the continent, not the anthracite fields especially.

Q. Any particular branch of geology, with respect to coal?—A. Yes; to coal, economic geology and mining of coal of all sorts.

Q. Have you occupied any official positions as mining engineer or geologist?—A. I was assistant geologist for the Pennsylvania state geological survey.

Q. What was that survey; when was it organized?—A. About 1876, I think, it was organized; along there some time, but it continued up until about 1890.

Q. Was that a special survey organized for a special purpose?—A. Yes.

Q. What was the purpose?—A. The purpose was to make a descriptive geological survey of the State, to determine the economic value of the minerals that were in the State.

Q. Minerals of all descriptions?—A. Minerals of all classes; everything.

Q. Do you recall the names of the members of that survey?—A. Do you mean of the commission or the engineers and geologists?

Q. The names of the persons who composed the survey.—A. J. P. Leslie was the director of the survey, geologist in charge. Mr. Charles Ashburner had charge of the anthracite portion of the survey until his death, or up until a certain time, and then Mr. Frank A. Hill had charge of the anthracite coal portion. I was assistant to Mr. Hill, and was before that assistant under Mr. Ashburner, also.

Q. Did your work concern itself chiefly with the anthracite portion of the survey?—A. Yes; it did.

Q. That survey did what with respect to the anthracite coal fields of Pennsylvania?—A. It accumulated all the information extant in connection with the anthracite coal that it was possible to secure and placed it in a permanent record, with maps, sections and cross sections, and geological charts. Those were all published by the State.

Q. There were a series of maps as well as charts, were there?—A. Yes; the whole survey of the State comprised something over a hundred volumes, but the anthracite survey was very much more complete than the other portion, and comprised not only text-books descriptive of those charts, but a great many maps of the surveys and of the mines themselves, showing in detail, on the scale of 800 feet to the inch, all of the mine workings in the whole anthracite district, just as completely as it was possible to obtain them, all the old mine maps, old workings, that were tucked away in odd places and would have been otherwise lost. In addition to that, it gave the records of the measures of the shaftings and bore holes everywhere that they could obtain anything of that sort. It also took cognizance of the different seams, of the thickness and amount, and the interstratified refuse, and they showed the pitch and area of the seams, the outcrops of the seams, the dip of the rocks wherever possible, and cross sections

of basins were made in different places, showing the contour of the different seams as they passed from one outcrop under the valleys to the other outcrop, and the distances between those beds and the approximate thickness of them—all those things, the physical conditions, in connection with the seams that it was possible to secure.

Q. That information was all embodied in a series of maps and charts?—A. Maps, charts, and the columnar sections from the sections around the coal measures, and descriptions and bed sections of individual beds on a larger scale, showing the number of inches of coal and slate, or the coal and slate in each particular seam.

By Major WARREN:

Q. When you speak of a bed, you mean a vein, do you not?—A. Yes.

By Mr. TODD:

Q. Did that survey itself make any estimate of the unmined coal in the ground?—A. No; I do not think they did anything of any extent. I think Mr. Ashburner made an estimate of a little portion of the region.

Q. This survey collected the materials from which it was possible to make a fairly accurate estimate of the coal in the ground?—A. Yes.

Q. Did this survey ascertain and mark out on any maps and charts the land holdings of each operator or producer in the coal regions?—A. Yes; the maps of the survey were on a scale of 800 feet to the inch, which was sufficiently large anywhere to put on the maps each individual mine, and each separate seam or vein in the line, but they also portrayed the land lines of all the holdings, both on warranty and the present owners at that time, as near as it was possible to secure them.

Q. Did the maps or charts contain the names of the owners?—A. Yes; the names of the owners—the warranty names and the land-owner names.

Q. In the term "owners" you include lessees, do you?—A. The map stated the man who owned the land in fee and the man who leased it. The map would show section such a tract John Brown, owner, and who was the lessee.

Q. As of what date does the map show that information?—A. Up to the date of the issue of the map, generally about 1887 to 1891, along there, in the northern coal field, and in the southern coal field a year or so later than that. That was finished later. The anthracite survey was under a head by itself. The other parts of the State were published by counties.

Q. What was the area of these anthracite coal fields as disclosed by this survey?—A. About 480 square miles. That is the total area of all four of the fields—the northern, the eastern middle, the western middle, and the southern.

Q. Those are the geological divisions?—A. As made by the state survey; yes.

Q. There are also trade divisions, are there not?—A. They are very often referred to in the trade, and I think the trade have

another division—the Wyoming, the Lackawanna fields, the Lehigh, the Mahanoy, and the Schuylkill and the Panther Creek.

Q. That is a mere tonnage division?—A. A mere tonnage-trade division. The trade plainly recognize it as such and they understand the geological division as we do in the engineering profession.

Q. There is a trade division into three regions, is there not?—A. Yes.

Q. Those regions are?—A. The Wyoming, Lehigh, and Schuylkill, or Lehigh and Mahanoy.

Q. Do you recall what the area of each of those regions was as disclosed by the survey?—A. The Wyoming, or northern region, had an area of 176 square miles; the Lehigh region, comprising the eastern middle field and the Panther Creek basin, 45 square miles, and the Schuylkill region, comprising the western middle, or Mahanoy and Shamokin field, which in itself was 94 square miles, and the southern, or Pottsville field, which in itself was 169 square miles. That made the area for the Schuylkill region 263 square miles.

Q. In general, where are these fields located; in what part of Pennsylvania?—A. In the northeastern part.

Q. What counties?—A. The northern field is comprised in Luzerne and Lackawanna counties, with a small portion of the northern extremity in Susquehanna and Wayne; the Lehigh region, comprising the eastern middle and the Panther Creek, is in Luzerne and Carbon; the western middle, the Mahanoy region, is in Columbia and Northumberland counties, and a small portion in Schuylkill County; the southern field proper is in Schuylkill County, and extends over to Dauphin County, the southern extremity of it being near the Susquehanna River, above Harrisburg a little ways.

Q. Are there any notable geographical or topographical features which mark out each of these regions?—A. The northern field particularly is comprised in a long valley, with mountains on either side; a well-defined valley. That valley is about 50 miles long, I suppose, and from 3 to 5 miles wide. I do not know but what it is longer than 50 miles. The eastern middle field and the western middle field and the southern field are rather mountainous, generally speaking, and comprised of hills and valleys, running in a northeast and southwest direction, and the coal basins are, generally speaking, parallel with the trend of the mountains.

By Judge CAMPBELL:

Q. The lower axis being in the bottom of the valleys generally?—A. Generally speaking; yes. The sinclinals, generally speaking, being in the bottom of the valleys.

By Mr. TODD:

Q. You once made, did you not, an estimate of the amount of anthracite coal in the ground which could be shipped out, and the proportions of that held or controlled by each of what are known as the large interests?—A. Yes; I did.

Q. Where did you get the materials from which you made up that estimate?—A. From the information portrayed in the geological survey publications, supplemented by my personal knowledge, having had a very intimate acquaintance with all that anthracite field and these various different regions we have been speaking about, and information obtained, where necessary, from persons or corporations whom I applied to.

Q. Also from the state mining bureau?—A. Yes; the published statistics of the anthracite industry published by the State of Pennsylvania mine inspectors' reports, in other words.

Q. And that estimate was published by you, was it not?—A. It was prepared by me and was published by Harvey Fisk & Sons, of New York, in the Bond Record.

Q. Published in the Bond Record of June, 1896, was it not?—A. One of them was of that date. There were several.

Q. The total summarizing estimates of the separate regions which had appeared in previous numbers of that magazine were brought together, were they not, in the estimate published in the June number, 1896, of the Bond Record?—A. Yes; that is correct.

Q. You said that this estimate was made by you at the request of Harvey Fisk & Sons, bankers, did you not?—A. Yes.

Q. As of what date was this estimate made?—A. As of the date of 1895.

Q. At the end of the year, or just generally as of 1895?—A. It was made during the year 1895. It was intended to be the end of the year for which it was made, about the end of 1895.

Q. Did you know why Harvey Fisk & Sons wanted such estimate made?—A. They told me that the anthracite interests issued great numbers of bonds at various times, and they were subscribed for, without hesitancy, by the people all over the country; but there was not anybody who knew whether the coal was going to last ten years or ten thousand years, and they thought it would be wise for them, as financiers, to know something of the tonnage or revenue which was back of these enormous bond issues. Therefore, they employed me to investigate the question. The estimate they asked me to make was intended to be a conservative one, which would be acceptable and reliable from a financial point. They did not desire any speculations as to the future, what might be won from old mines or culm piles or anything of that kind, but they wanted that estimate based on the past experience of the regions, and to include the possible shipments only, not the production.

Q. That is the way you did base it?—A. Yes.

Q. Do you know whether other banking houses besides Harvey Fisk & Sons ever used your estimate or referred to it, or depended upon it?—A. Only from hearsay. They referred to it, bankers in the State have spoken of it to me, and banking magazines and papers have made extracts from it, and I have been told by others that the estimate has been used as an authority for all these years.

Q. Do you know whether it has ever been incorporated in any publications of the Geological Survey of the United States? I do not mean the entire survey or articles, but just the estimate.—A. I do not know that it has. If it has, I have not seen anything of the kind.

Q. I believe it was referred to in the proceedings in the coal strike commission, was it not, for general information concerning the subject?—A. Yes; estimate made by me.

Q. This estimate which you have made is an estimate of the coal in the ground which can, and probably would be, shipped to market over the railroads and canals, is it not?—A. Yes.

Q. The estimated amount of coal which could be produced would be how much in excess, would you estimate, of the amount of coal which can be shipped to market?—A. The statistics published by the mining inspectors' reports of Pennsylvania for a long series of years show that the production is 10 per cent more than the shipments; that is, eleven-tenths of the shipments would approximately equal the production of coal, but the production is made up of the shipments plus the local consumption and fuel used at the mines.

Q. In other words, this 10 per cent excess consists of coal used in the vicinity?—A. Used in the anthracite region, in the vicinity, and at the mines for fuels.

Q. Of course the amount of coal actually in the ground is much greater than either the amount which you have estimated could be shipped out or could be produced?—A. Certainly. It is necessary to leave a very large amount of coal in the ground as pillars to sustain the surface and to protect the mine.

Q. Have you any idea how much that would be comparatively?—A. I think that the pillars—that is, the coal which might be won from the pillars, and from the culm piles, and from the thin beds—thinner than I have figured on in this estimate—would perhaps increase the estimate 25 per cent.

By Judge CAMPBELL:

Q. The bulk beside these pillars will vary very greatly, according to the thickness of the vein and its character? The size of the pillar or the quantity of coal remaining in the pillar is somewhat dependent upon the nature and character and pitch of the vein?—A. Certainly. There are a great many things in connection with mining that affect its economy in the quantity of coal you can secure.

Q. There is no general rule applicable to the entire field in that regard?—A. Not necessarily; no; except the one I have adopted here, which is probably the best that can be gotten at to avoid including those details.

By Mr. TODD:

Q. On page 500 of the Bond Record for June, 1896, there is what purports to be an estimate made by you of the unmined coal which can be shipped to market and the proportions in which that is owned

or controlled by various railroad companies. Look at that, please, and see if that is the estimate which you made?—A. [After looking.] Yes, sir; it is.

(Estimate offered in evidence and marked Government Exhibit No. 157.)

Q. What do you know about this paper, the Bond Record?—A. It was a monthly magazine that was published at that time under the control and supervision of the financial firm of Harvey Fisk & Sons, of this city.

Q. It was a financial magazine, was it?—A. Yes, sir.

Q. Published in New York City?—A. Yes, sir.

Q. Under the first column of this table there is a list of various railroads which it is stated here own certain tonnages. I suppose you mean by that that those tonnages are owned either by the railroad itself, as in the case of the Delaware, Lackawanna and Western, or by coal companies whose stock is owned by the railroad companies, do you not? For example, the Erie Railroad Company, as we are informed, owns no coal lands itself, but it owns all the stock of certain coal companies which do own coal land. When you have stated here that the Erie Railroad Company and certain other railroad companies own certain tonnages, you mean tonnages owned either by the railroads or by coal companies which they control?—A. Yes, sir; that has already been explained in the text of this article. The first column gives the names of the railroads whose subsidiary companies are in the coal business and shows the tonnage that those subsidiary companies own, or did own at that time, and also the tonnage that was shipped over these railroads by individuals, or others, who had tonnage contracts with the railroad.

Q. Under "tonnage owned," do you include tonnage in lands which are held in fee, as well as lands which are held by lease?—A. I mean what tonnage was owned. I do not mean necessarily that the land is owned. They secured this tonnage through owning the lands in fee or having leaseholds on those lands.

Q. By "tonnage controlled by contract," what did you mean?—A. At that time the method of shipment by the individual operators was usually to contract their output to some one of the railroads. They made an agreement by which all their coal, or certain portions of it, should go to a certain railroad for a term of years. Therefore this road controlled the tonnage from that colliery until the agreement expired.

Q. In this estimate you have used as the unit of volume the foot-acre, have you not?—A. Yes, sir.

Q. Please state what a foot-acre is?—A. That is a very convenient unit adopted by engineers to expedite calculations in connection with the amount of tons that a property contains, and it means 1 acre of coal 1 foot thick. I might say that in this estimate the coal beds, as referred to, and the foot-acres referred to have reference to the total thickness of the coal seam, including all of the interstratified refuse, which would make the coal seams, on an average,

perhaps 20 per cent thicker than if you figured on the clean coal in the seam. In other words, the average quantity of interstratified refuse in the anthracite field is approximately 20 per cent; one-fifth of almost all the seams are refuse and four-fifths coal.

Q. In making your estimate you estimated that in the future, did you not, the tonnage of coal which could be shipped out of each foot-acre would be the same as it had in the past?—A. Yes.

Q. You did not take into account that improved methods of mining and improved methods of burning coal would enable probably a larger tonnage to be taken in the future from a foot-acre than had been in the past?—A. No; I did not. That was one of the points I was particularly requested not to do, because the object of this investigation was to find out a conservative estimate of this matter.

By Judge CAMPBELL:

Q. Those matters were problematical?—A. They were speculative at that date.

By Mr. TODD:

Q. Since that date, even within the last ten or twelve years, improvements have been made in the methods of mining which enable a larger tonnage to be taken out from a foot-acre than had been in 1895 and theretofore?—A. Yes, sir.

Q. Could you state roughly about how much in tonnage it would have added to your estimate if you had taken into account the possibilities in the way of improvements?—A. You have now reference to shipments only, have you?

Q. I am speaking entirely of the shipments.—A. About 25 per cent more, I think, approximately.

By Mr. MCREYNOLDS:

Q. There is no date on this tabulated estimate. As of what date was it made, as near as you can tell us now?—A. It was up to January, 1896.

Q. So this tabulated statement is made up to the 1st day of January, 1896?—A. Yes, sir; it includes the year 1895.

Q. Do I understand you rightly, that under the first column of this tabulation, headed "Railroads," where appear the names of the railroad companies, that you intended to include the coal either owned or controlled directly by the railroad company, as in the case of the Delaware, Lackawanna and Western Railroad Company, or by some coal companies which are in turn themselves controlled by railroad companies?—A. Both of those. For instance, in the Delaware and Hudson case I included with it the Northern Coal and Iron Company, and in the Lehigh Valley there were several subsidiary companies.

Q. In some cases the railroad company itself was the direct owner?—A. Yes, sir.

Q. So this column is intended to include the lands of coal controlled either by the railroad itself directly or through some subsidiary coal company?—A. Yes, sir.

By Mr. TODD:

Q. In this same article of yours in The Bond Record, June, 1896, following almost immediately after the estimate, I find, on page 502, the following:

The following comparison of percentages of shipment, allotment, and tonnage reserve will also be interesting in this connection.

	Percentage of shipment 1895.	Percentage of allotment 1896.	Percentage of future supply controlled.
Delaware, Lackawanna and Western R. R. Co	13.16	13.35	6.55
Delaware and Hudson Canal Co	9.34	9.60	2.29
Erie and Wyoming Valley R. R. Co	3.75	4.00	1.82
Erie R. R. Co	3.91	4.00	.77
New York, Ontario and Western Ry. Co	3.06	3.10	.28
New York, Susquehanna and Western R. R. Co	3.02	3.20	.54
Delaware, Susquehanna and Schuylkill R. R. Co	4.11	3.50	1.38
Pennsylvania R. R. Co	10.59	11.40	6.24
Central R. R. of New Jersey	11.51	11.70	17.30
Lehigh Valley R. R	15.81	15.65	16.87
Philadelphia and Reading R. R. Co	21.47	20.50	42.25
Uncontrolled tonnage			3.71
Total (see diagram on p. 501)			100.00

From this we see that the corporations named control, either directly or indirectly through their subcompanies, 96.29 per cent of the available tonnage of the future, and in about the following manner:

	Per cent.
They own by actual purchase or its equivalent	90.93
They control by long-term contracts, say about	3.36
They control by short-term contracts of various kinds, say	2.00
	96.29
Uncontrolled, i. e., remaining in private hands	3.71
Total	100.00

Explain what those two tables are.

(Objected to by Judge Moot on the ground that it appears by the testimony of the witness that it is based on hearsay, and that hearsay is not competent evidence, or a proper sort from which to derive evidence to support the principal allegation in the petition.)

A. The first one has three columns, headed "Percentage of shipment 1895," "Percentage of allotment 1896," and "Percentage of future supply controlled," and I think the headings of these columns state what they are sufficiently well, perhaps. The first column gives the percentage of the total quantity of coal shipped to market by each of these interests during the year 1895. The second column shows what was at that time known as the allotment that was intended to be shipped by each of the interests at that time, proportioned by some trade arrangement they had, and the third column shows the percentage of the coal that each of the interests possessed.

Q. In that column you simply work out from the estimate which has already been put in evidence the percentage of the unmined coal possessed by the different interests?—A. Possessed by the different interests; yes, sir. Hardly that. It is not the percentage of the

unmined coal; it is the percentage of the unmined coal which may be shipped. I am somewhat particular about that, because most all other estimates that are made have reference to the production, and almost everybody who has quoted this estimate refers to it as an estimate of production, and that is an erroneous notion.

By Mr. McREYNOLDS:

Q. You mean that you have worked out in this little table from the figures which you have already described and the experience or information which you have already described, these percentages?—A. Yes, sir.

Q. And do you mean, for instance, that the Lehigh Valley Railroad Company of the total coal mined in 1895 shipped out of the anthracite region $15\frac{81}{100}$ per cent?—A. Yes, sir.

Q. Then you have under the column "Percentage of allotment 1896," opposite the Lehigh Valley Railroad Company, $15\frac{65}{100}$ per cent. What does that mean?—A. That means that was the proportion that it was arranged they should ship during that year.

Q. Arranged by whom?

(Objected to Major Warren as incompetent and hearsay.)

A. At that time it was the custom of the interests mining coal in the anthracite region to apportion to each road the quantity of coal that they should ship during the year. That was a matter of common knowledge by everybody.

By Mr. McREYNOLDS:

Q. So, under the title of "Percentage of allotment 1896," you have included the percentages which your information led you to understand had been apportioned among those various interests?—A. Yes, sir.

Q. Under the column of "Percentage of future supply controlled," you referred to what you have been narrating, namely, the amount of coal that might thereafter be taken out of the mines and actually shipped away to market?—A. Yes, sir.

Q. For instance, I understand from this table that you estimated on the 1st of January, 1896, the Philadelphia and Reading Railway Company, either through direct holdings, or through a coal company, or one or more, which it owned or controlled, controlled $42\frac{25}{100}$ per cent of the future supply of anthracite coal in Pennsylvania?—A. Yes, sir.

By Mr. TODD:

Q. Do you happen to know how the three different trade regions rank in point of productiveness?—A. Yes, sir; I do. I do not know that I can give you the exact figures. The northern field produces approximately half the coal that is produced, the middle field, or Mahanoy region, produces the next highest tonnage, and the southern field the next, and the Lehigh Valley region the smallest. The table on page 6, volume 4, of The Bond Record shows that.

By Mr. McReynolds:

Q. Did you make up, in connection with the same investigation, a table for the year 1893, called the "anthracite tonnage table?"—A. I did.

Q. Does it show accurately what you ascertained at the time to be the facts?—A. Yes, sir.

Table referred to offered in evidence by government's counsel as Government Exhibit No. 158.

Q. What is the distance from Scranton to New York City?—A. One hundred and forty-six miles, by the Delaware, Lackawanna and Western Railroad.

Q. Do you know where the principal fields of bituminous coal are which furnish such coal for use in New York City?—A. Yes, sir; they are located in Pennsylvania, Maryland, West Virginia, and Virginia.

Q. Which is the nearest bituminous coal field to New York City?—A. The Broad Top field in Pennsylvania, south of Huntingdon, a town on the Pennsylvania Railroad.

Q. Explain in the record how you ascertained the totals which you have put in these tables already in evidence.—A. From the geological maps I ascertained, in the manner mentioned in my previous testimony, the number of foot-acres of coal contained in the mined area and in the unmined areas in all these various seams. The method of securing the unmined area was by outlining the outcrops of each seam on these geological survey maps, and from the known thickness of the bed I could estimate the contents or volume in foot-acres. In the same manner I estimated the area of each mine working, in each seam on each separate property, and, adding all those items together—that is, all of those several worked areas—I obtained an aggregate of worked area or the foot-acres worked for each region, and, having from the published statistics the knowledge of the total tons shipped to market from each of these regions, it was a simple matter to divide the tons shipped by the foot-acres contained, and it gave us the number of tons shipped per each foot-acre in the past. This method of obtaining this tonnage is one largely applied to all the fields, and will include all the wastes and uncertainties due to faults and thin and thick seams, and various catastrophies that occur in mining, on the theory that the past experience of the field is a good criterion to judge of its future experience.

Q. Have different engineers who have undertaken to make estimates about the contents of these coal fields adopted different methods from the one pursued by you?—A. Yes; there are only two other complete estimates that were made at that time, one by Mr. Harris, made previous to the publication of the Pennsylvania survey, and the other made subsequent to that publication, by one of the assistant geologists, A. De W. Smith. That was made in 1893.

Q. Do the ultimate figures of those engineers differ according to the bases upon which they fixed their estimate?

(Objected to by Major Warren as being clearly hearsay and incompetent.)

A. Yes.

Q. State whether you applied the same basis for making your estimate to all the properties contained in the three geological regions?—A. Yes, sir; but the factor used is different. It was arrived at in the same method, but it is a different factor.

Q. What do you mean by a different factor?—A. In the northern field I used a certain quantity of tons per foot-acre as the experience we had obtained. In the Lehigh region I used another quantity as experience obtained, and in the Schuylkill a certain other quantity.

Q. In other words, you based your estimate upon the same theory for every section?—A. Yes, sir.

Q. The figures shown by the experience in the different sections were different?—A. Yes, sir.

Q. Therefore, you used those different figures?—A. Yes, sir.

Q. You founded your estimate upon the same fundamental facts for all these tracts?—A. Yes, sir.

Q. In computing the percentages of the whole area controlled by any particular interest, that also was based upon the same fundamental theory?—A. Yes, sir.

Q. If I understood you properly in the early part of your examination, you said that if you had reckoned in reference to the improved methods now in existence for getting coal out of the ground that you would have had to increase your total by about 25 per cent?—A. Yes, sir.

Q. If that method had been followed by you, what would have been the difference between your estimate and what you call Smith's estimate?

Major WARREN. I object to the question, because Smith's estimate is not in the record, and, therefore, this is not competent.

A. It would be less than a hundred million tons difference, apparently.

Q. Would the two estimates have been within 5 per cent of each other?—A. Yes, sir.

(At 12.20 o'clock a recess was taken until 2.30 o'clock p. m.)

Cross-examination by Major WARREN:

Q. State when you first personally became in any way associated with the mining of anthracite coal.—A. You mean in what capacity?

Q. As mining engineer and geologist.—A. In 1884 or 1885, along there.

Q. Prior to that time you had had a technical training as a mining engineer, had you not?—A. As a civil engineer.

Q. When did you first have any practical experience as a mining engineer?—A. I was technically trained as a civil engineer, and then engaged in that business in the West, and in connection with that I had some little opportunity to observe, and, after returning from there, living in West Pittston, Luzerne County, in the anthracite coal

region, I had an opportunity to observe, as an engineer naturally would, the manner in which mining was done, and worked some little for mining interests, and then, after being associated with the Pennsylvania state survey, that brought me intimately in touch with the whole thing all the way through. After the survey was completed I continued. I was well equipped then for a certain class of business, and I continued as a mining engineer directly. In my technical training, although the degree was a civil engineer, there was a great deal of mining included in the course. They are very intimately connected.

Q. Tell me with what one or more of the mining companies you have had practical experience as a mining engineer in the mines for them.—A. The Pancoast Coal Company, which is at Throop, 6 or 7 miles north of Scranton, and a number of other coal companies that I do not now remember just the particular names of. But while on the geological survey I was in a great many mines in different places investigating the mining and so forth throughout the Luzerne and Lackawanna regions and the Bernice region, and throughout the northern coal field—a great many mines.

Q. You have resided in West Pittston, in Luzerne County, in the northern coal field, for several years last passed, yourself?—A. Yes, sir.

Q. You say that you were an assistant to Mr. Hill, and prior to that another gentleman, in connection with the work for the State, known as the "geological survey?"—A. Yes, sir.

Q. In connection with that, what personal work did you do? In other words, how did you personally control yourself in and about that work?—A. First, at Pottsville, in the Schuylkill region, I was engaged as one of the assistants in preparing the maps and in the field work, obtaining the information from it and preparing the maps, measuring the shafts and slopes and sections in the coal veins, and subsequently in the Luzerne region I was engaged in the same manner in the office at Hazleton, surveying the coal fields, taking the mine maps that were secured from the mine properties, placing them on the sheets, reducing them, and putting them in the sheets, measuring the coal beds, making the cross sections of the coal basin, and doing all those things that were necessary to find the geological information necessary. And then in the Bernice district.

Q. Speaking generally, the character of the work which you personally devoted yourself to in the northern field was similar to that you speak of——A. In the northern field I had full charge.

Q. By the northern field we mean, do we not, both you and I, Luzerne and Lackawanna counties?—A. Yes, sir; my charge extended from the northern line of the city of Wilkes-Barre clear through to Forest City. All of those maps I am personally responsible for and had charge of the work completely.

Q. And the experience or the information from which those charts or maps were made represented, in part, personal work by you, in part personal work by other gentlemen associated with the com-

mission's labor, and in part the mine maps which were placed at your disposal by the various operating companies, and in part from records and title papers and leasehold estates as evidenced as such, and by the various matters which came to you from outside sources other than your personal investigation, as well as your personal work?—A. Yes, sir.

Q. You spoke of utilizing the mine inspectors' reports. They gave you no estimate of the tonnage in the ground upon which future mining might be based, or an approximation might be based, did they?—A. No, sir.

Q. In this approximation or estimate as to the future amount of coal that could be mined, you had to take first, of course, the coal acreages unmined—did you not?—A. Yes, sir.

Q. As evidenced by title papers that were placed at your disposal?—A. No; I did not use those. I did not use any title papers.

Q. As evidenced by writings of some sort or another indicative of the holdings of the various companies?—A. Yes, sir; the evidence of that that I used was the geological survey maps on which the land lines were placed. This evidence was obtained from the mining companies themselves—from their mine maps and things of that kind.

Q. The land lines, however, would not indicate on them the outcroppings?—A. No, sir.

Q. That you took from the geological survey?—A. That I took from the geological survey, supplemented by my own personal knowledge, in many cases. Where I was doubtful about it, I went into the field and made the investigations necessary.

Q. As a geologist?—A. Yes, sir.

Q. In other words, you approximated a line?—A. Yes, sir.

Q. Within the land lines you approximated the line where, in your judgment, the outcrop was?—A. Yes, sir.

Q. You did it as thoroughly and efficiently as any geologist or mining engineer could do in locating those outcrops?—A. Yes, sir.

Q. But you could not, from the outcrop, locate the distance from the outcrop where the underlying veins would stop, could you?—A. In what way do you mean?

Q. That is to say, the underlying veins would go farther than the outcrop, which would be indicative, in many instances, of simply the surface vein?—A. I located the outcrop of each vein as near as I could. The geological survey maps have on them only the outcrop lines approximated from the principal bed that are worked in the region, and the outcrop of the other beds intervening I located myself from my own knowledge, and interpolating between two so as to get the location.

Q. In the Schuylkill region the conglomerate represents the class of stratification below which anthracite coal does not appear, does it not?—A. Yes, sir; we usually call the conglomerate the floor of coal measures, you might say. But in the Schuylkill region there are coal beds in the conglomerate.

Q. In our region it is the floor of the anthracite deposit?—A. Yes, sir.

Q. In the anthracite field, which you have given us as 480 odd square miles, you do not include what are called the anthracite fields in the region of Bernice, in Sullivan County, do you?—A. No; I do not think that is included. At that time they were not considered as important as they are now, and it was thought wise to leave them out of his particular investigation.

Q. But as a fact, they are anthracite coal?—A. Yes, sir.

Q. For the purposes of trade reference they are just as much anthracite coal as any other kind of anthracite coal?—A. Yes, sir.

Q. In connection with that work did you personally make investigations as to the extent of the areas of semianthracite beds?—A. In Bernice?

Q. Yes.—A. Oh, yes. But not in connection with this work, but other work that I did.

Q. I asked you in connection with this work.—A. No; I did not pay any attention to it in this work.

Q. Have you had occasion to carefully investigate, as thoroughly as you did for the purposes of this geological survey, what we ordinarily speak of as the Bernice region, so called?—A. Yes, sir.

Q. Tell us the superficial area of that region.—A. I have not made any note of it. I could perhaps give you a nearer estimate of the possible tonnage than I could of the area.

Q. I want first the area. Can you approximate the superficial area?—A. I can approximate about; yes. Possibly 2,000 acres; in that neighborhood.

Q. That region lies north of the region that we ordinarily have spoken of as the region of anthracite coal deposits, does it not?—A. Yes, sir; northwest.

Q. In the State of Pennsylvania, but farther north?—A. Yes, sir.

Q. The coal there is prepared similarly as it is in the Luzerne and Lackawanna regions; is it not?—A. Yes, sir.

Q. By breaker preparation, sizing and equalization, and so forth, along the same methods?—A. Yes, sir.

Q. And enters into competition with other anthracite coal, and is sold in the markets as anthracite coal?—A. Yes, sir.

Q. The Wyoming field that you speak of, of course, includes Lackawanna County?—A. Yes, sir.

Q. And that is subdivided, is it not, generally by those living there at any rate, as the Lackawanna and Wyoming regions?—A. Yes, sir.

Q. You found in your investigations great differences in both the quality and thickness of the same vein running through Luzerne and Lackawanna counties, did you not?—A. Certainly.

Q. And you found great variation within the same vein in the same property lines operated by the same company?—A. Sometimes.

Q. Do you know the Baltimore vein in Luzerne County, known in the Lackawanna region as the Big, or Fourteen Foot, Vein?—A. Yes, sir.

Q. Do you remember that that squeezes down to 0 feet in the vicinity of the Pine mine in the Lackawanna just below Scranton, and 1 mile or 2 below, that is lost entirely?—A. It outcrops below there. It is absent. It outcrops and appears again at Pittston.

Q. In your investigations in a colliery, do you not recall observing in the chambers and areaways and gangways, which represent the openings developed at the time you were there, the greatest variations in the character and quality of the vein material—that is to say, in the character of the laminations of the same vein—sometimes within very short distances, a quarter of a mile, or even less?—A. Yes, sir; sometimes there are quite appreciable differences.

Q. And any man, however skillful he may be as a mining engineer, or whatever experience he may summon to his aid in addition to his skill, in undertaking to estimate the yield—that is to say, the amount of coal in the vein material that can be manufactured into a marketable commodity—goes into the realm of speculation to some extent, does he not?—A. Certainly. No calculation can be made of a tonnage which would be any more accurate than an estimate, and it is not entitled to any better name than an estimate.

Q. Nor has it a sufficiently substantial basis to justify its being used as a figure that will represent the ultimate yield in the locality it pretends to cover; is not that right?—A. I will not agree with that either.

Q. It is an estimate; it is as to coal in the ground unseen and unseeable, is it not?—A. Yes, sir.

Q. The only evidence you have in hand as to that would be such cores from bore holes as had been driven in that unmined area?—A. No.

Q. That is to say, the only coal in the unmined area that you could have in your hand would be coal that would come from the cores of bore holes?—A. That is all you could have in your hand; yes, sir. It is not all the evidence.

Q. I mean evidence in hand. Then, you take into consideration the general contour of the ground, the character of the vein, where it is open, its appearance at the outcrop where it is visible, if it is visible, also at the outcrop, and such bore-hole cores as you may have access to or record of, and they are, generally speaking, the bases of your figures and calculations, are they not?—A. Generally; yes, sir. There are other things that come in to add strength to it.

Q. They must necessarily be uncertain, must they not?—A. To a certain extent uncertain.

Q. If you find in a vein that is open through the gangway, in which you can yourself walk, evidences of changing conditions in the laminations in that vein and in the quality of the coal in it, within one property and one colliery operation, where the rib of the vein is be-

fore you to examine, is it not fair to assume that if you are asked to estimate as to the conditions in an unmined area through which you can not penetrate, you are more or less in the dark, independent now of skill or previous experience as a mining engineer?—A. Of course no geologist can see or know positively what is under the ground or what is ahead of him any more than we can ourselves know that the sun will rise to-morrow, but we can argue intelligently and safely from our experience in the past. We know that the sun rose this morning, and it has risen every morning since the world began, and we can be reasonably sure it will rise to-morrow morning. We know that the conditions affecting the coal seams that have been mined have assumed a fair average, and from that we can draw reasonably safe deductions as to the conditions which are ahead of us. If it was not so, there would not be so much money spent in anthracite mining as there is to-day. People go in there and build tremendous breakers and spend millions of dollars without knowing any more what is ahead of them than a child does, but they assume on their past experience what the future will be.

Q. Do you not know of instances of people making just such expenditures, having the advantage of the best skill in the way of mining engineering, and finding that notwithstanding such experience and such skill and such general knowledge as you refer to, that they are disappointed when they actually opened and developed the veins which they assumed were there, and find they are not there?—A. That is the case sometimes.

Q. Do you not recall Mr. John Jermyn, who perhaps was one of the most successful coal operators in our field, was he not?—A. Yes, sir.

Q. Do you not recall the expenditure of large sums, running into hundreds of thousands of dollars, up at the Rushbrook operation?—A. Yes, sir.

Q. And finding that the deposits there were not such as in his judgment even to justify his attempting to mine the coal there?—A. Yes, sir.

Q. I only state that as illustrating the great uncertainties in the anthracite regions as to the ultimate yield of coal from given areas. You will certainly acquiesce in the statement that that is an uncertain thing?—A. Certainly.

Q. You referred this morning to a foot-acre. If I understood you correctly, a foot-acre represents a vein, we will assume a foot thick, but spread over an acre superficially. Therefore, it is the unit of measurement at times of the probable yield of a vein which may have several foot-acres in it, in a region where the veins are, generally speaking, horizontal? Is not that right?—A. Yes, sir; it may be in other places where they are not horizontal. You can have horizontal foot-acres, or bed acres, as we call them.

Q. But the foot-acreage estimate is particularly applicable to veins which, speaking roughly, are horizontally situated by their stratifi-

cation?—A. Yes, sir; you can apply it with equal force to other mines, provided you do it in a proper way.

Q. Tell me how you apply the foot-acre yield to the veins of the character in the Pottsville region?—A. Within the outcrop of a vein we do not know how many contortions or twists you have, a certain number of acres, say a hundred acres. In twenty years they have mined out a certain area of that hundred acres, which is known absolutely and you know the thickness of that bed, so you know the cubical contents of that mined-out space. You also know how many tons have been taken out of that place in that time—actual tons shipped away. By dividing those actual tons by the foot-acres in the mined-out space, it gives you the tonnage per horizontal foot-acre, which will be just as accurate as if you go to the trouble of noting the convolutions of that vein and finding all the little details about it. If you have a hole in the ground, you know how much dirt comes out, you know how much dirt per cubic foot came out of it.

Q. What did you estimate the foot-acre yield—that is, the yield per foot-acre?—A. I do not remember.

Q. In answer to the Government's counsel you called his attention to a long tabulation, which I understand he is going to incorporate in the record, and I understand that tabulation gives your idea of the probable yield in the future in the anthracite region of coal?—A. Based on the experience of the past.

Q. What did you have in mind when you made up that table as your thought of the probable yield per foot-acre?—A. That was arrived at as a deduction from the past experience, and it was the foot-acres of the total thickness of the coal bed, and included the refuse in the veins—the coal in the vein and the refuse also. For instance, a bed that is 5 feet thick and had 1 foot of refuse in it, I figured would be 5 foot-acres of coal bed instead of 4 foot-acres of coal. The bed material would represent 5 foot-acres.

Q. But it would yield as a merchantable commodity but 4 foot-acres?—A. Four foot-acres of coal; yes. But I assembled all of the foot-acres mined out, and took the northern coal field, each vein, and the total area mined and the thickness of each bed, and I could estimate the total cubical contents mined out in the years past up to the date of this estimate. Then, knowing from the public statistics the total contents shipped from that region during that time, I could give the average of foot-acre yield of those coal beds up to date. That sort of an estimate eliminated any necessity of considering the thin beds or thick beds or faults or squeezes or anything of that kind, because they had in the fifty years past encountered all those things in the course of the mining, and where there was a fault they could not get out coal, and where the vein was in fine condition they got out more coal. So this was an actual average of the region in the past. It was what they had produced per average foot-acre over the whole region; whereas if you would confine your estimate to any 1

acre or any 50 acres of good coal it would run up into a great deal larger foot-acreage.

Q. What per cent of vein material did you figure would go to market?—A. I did not figure any per cent.

Q. You said you utilized your knowledge from historical data or experience of the past fifty years of the various kinds of veins. You do not recall in such investigations ascertaining that in the past fifty years prior to 1895 they had been mining the thin veins, do you?—A. No.

Q. Then, the question of the yield per foot-acre from thin veins could not have entered into your estimate, could it?—A. My estimate only included veins as thin as 4 feet. It did not include anything under 4 feet.

Q. More than that, it also represented veins that were 4 feet of clean coal, did it not?—A. No; the smallest I took was a 4-foot vein; allowing for about 20 per cent of refuse, would be, say, 3 feet and something of clean coal.

Q. You do not mean to say that a vein 4 feet thick that only has 20 per cent of refuse in it that 80 per cent of vein material in such a vein would go to market, do you?—A. No; 80 per cent of the vein constitutes the quantity of good coal that is in it. Then you have got to make your deduction.

Q. Then you have got to deduct from that, if you are going to talk about what is going to market, first, that part of the coal that never comes out, remaining as pillars or otherwise; and second, the part that comes out which is wasted by the preparation for market of that material sent to the breaker?—A. That is one method of getting at it, but this method eliminates all that, because I do not consider all those things. I say, "Here is an opening, a hole in the ground, from which they have taken out so much." I do not care if there are 10,000,000 left in there, I figure on what has been gotten out.

Q. Did you not find in your investigation that they had not sent to market more than 50 per cent of the vein material in the past prior to the time you made this estimate in the northern field?—A. Yes, sir; according to this estimate there is over 50 per cent that has not gone to market.

Q. So that if you undertook to estimate that all but 20 per cent would go to market, you did it upon a different basis than the historical data would justify, did you not?—A. When I said all but 20 per cent, that 20 per cent was rock. The balance is the total coal in the vein. I never made any estimate as to what percentage of that went to market, or anything of that kind.

Q. I understood you to say that your estimate was based upon the probable number of tons that would be shipped or could be shipped. That means going to market, does it not?—A. Yes, sir.

Q. Then your estimate is based and is solely based upon that proportion of the vein material that is manufactured into merchantable

coal, is it not?—A. You may call it proportion if you desire to figure it out. I did not figure out the proportion.

Q. You draw the distinction between the production of the vein and that part of the production which is shipped to market?—A. Yes, sir.

Q. And you say it will represent about 10 per cent?—A. The proportion that is not shipped to market is about 10 per cent of what is shipped.

Q. That is made up, you say, by what is used for fuel purposes at the operation, and what else?—A. What is sold locally, wagon trade, and things of that kind, and used in the engines.

Q. You say that that proportion of it is too small, in view of the data which can be gathered from the mine inspectors' report in recent years, at any rate, as to the amount consumed for fuel?—A. No; it holds up pretty well. I have averaged it for a long series of years, and it holds up pretty well. Of course, it is not exact, but it is just about approximate, as near a percentage, as you can take. You can take 10¼ or 10¾, or something of that kind.

Q. Your familiarity with this special work for the State, and for such other work as you have done along independent lines, has brought you in contact with breaker preparation of anthracite coal, has it not?—A. To a certain extent; yes, sir.

Q. You are familiar with the character of the breaker preparation prior to 1895 and since?—A. Yes, sir.

Q. And the construction and equipment of the breakers prior to 1895 and since?—A. Yes, sir.

Q. And there is a difference in the construction and equipment of the breakers prior to 1895 and since, is there not?—A. Yes, sir.

Q. And it is a very much more expensive proposition to equip a breaker with modern machinery and appliances in order to meet market demands since 1896 than it was prior to that time, is it not?—A. Yes, sir.

Q. Going back a little further you found, did you not, that in the earlier years the lump coal, so called, and the steamer and the broken constituted the larger proportion of the vein material that was marketed; that is to say, the anthracite coal as marketed was largely made up of those three sizes, was it not?—A. In the early stages of the trade it was.

Q. When bituminous came into competition with anthracite for steam purposes especially, then those three sizes—steamer, lump, and broken—could not find a sale as against bituminous, is not that right?—A. Yes, sir.

Q. And it was necessary, therefore, to break them down by rolls and other processes in the breaker to smaller sizes?—A. It was.

Q. Such as egg, stove, and nut?—A. It was; yes, sir.

Q. That occasioned a considerable increased waste in the vein material, did it not?—A. It did, and it did not. That can be answered in two ways, depending on the view point you take. We break the coarse coal down into smaller sizes so as to prepare it for more accept-

able use for domestic purposes. In doing that it produces a very much larger percentage of very small coal, which, at the early stages of the trade, there was no means of utilizing, and a good percentage of it was wasted. But in the modern days we have found out how to use that, and now most all of it goes to market, except the very smallest, perhaps the size of a grain of wheat, at a reduced cost.

Q. Prior to the utilization of the size of pea and below for steam purposes, a very large proportion of the vein material was waste, was it not?—A. We called it waste in those days; yes.

Q. And the breaking down of the lump, steamer, and broken made a very considerably larger proportion of coal, pea and below in size, than would have been made had the market taken lump, steamer, and broken?—A. Certainly.

Q. Is it not a recognized figure in our northern field that in breaking coal down from one size to another, 30 per cent of the coal running through the rolls represents the waste of the coal going through that particular roll?—A. We do not call it waste now. It represents the small sizes.

Q. At any rate, it is waste so far as you grind it down to a size below the size of pea; is not that right?—A. Yes, sir.

Q. The prepared sizes of coal, so called, are the sizes above pea, are they not?—A. Yes, sir.

Q. And always have been?—A. Yes, sir.

Q. Any size below pea is a by-product, is it not?—A. In a sense; yes, sir. It goes to market at a lower price than the principal product.

Q. Aside from that sense it is a by-product in another sense, is it not, that the breaker equipment is not prepared, is not built for the purpose of manufacturing those sizes, is not that right? I mean as a primary manufacture of coal?—A. Yes, sir; that is right. The main object in building a breaker is to make just as much big coal as you can.

Q. None of these small coals below the size of pea are mined at a profit of and by themselves independently?—A. No.

Q. That is to say, it costs more to prepare for market the sizes below pea than the market price would be for those sizes by themselves?—A. Yes, sir.

Q. They constitute, do they not, approximately, one-third of the total output of the colliery?—A. At the present time, yes; approximately one-third.

Q. Is it not really a little more than one-third? Is it not about 40 per cent?—A. Yes, sir; it depends on what region you are in. We get a little more in the northern field than we do in the southern field of large coal.

Q. Take the northern field, what per cent would represent the proportion of the small sizes below pea from the total output?—A. In the northern field about 70 per cent of the large sizes, and the balance would be pea and smaller.

Q. [illegible] speaking as of what date now?—A. To-day, approx[illegible].

Q. [illegible] are speaking as of what date?—A. At the present time. Say 65 to [illegible] 5 per cent.

Q. What proportion of production is in pea size in the last few years?—A. About from 12 to 18 per cent, say an average of approximately 15 per cent.

Q. Then you had 15 to 30 odd, and it would represent the proportion of the total output in sizes of pea and below?—A. No; the buckwheat would run about 9 per cent, and the buckwheat No. 2 approximately 6 per cent; that would make about 30 per cent for the three sizes, approximately, in the northern field.

Q. Are you now including pea?—A. Yes, sir.

Q. Take the middle field.—A. I have not the middle field by itself, but taking the southern field, all the other fields together, they come under generally the same class, the contorted measures, and there the proportion of prepared would run from 30 to 60 per cent and the pea from 12 to 14, and of buckwheat from 25 to 19, and buckwheat No. 2, 33 to 37, making an average of possibly 45 per cent of prepared, 22 of buckwheat, and 20 of buckwheat No. 2, approximately, from 30 to 60. The Lykens Valley soft coal portions of the southern field make a good deal less large size than the other parts.

Q. Anthracite coal as distinguished from bituminous coal is a manufactured product, is it not?—A. Yes, sir; we have to do considerable manipulation to it after it is out of the mines before it is sent to market.

Q. In other words, it has to be manufactured into a merchantable commodity after you get it out of the mines?—A. Yes, sir.

Q. Whereas bituminous coal is sold run of the mines?—A. Largely. In some places they separate it.

Q. Bituminous, in your investigations, you have ascertained is in keen competition with all of the sizes of anthracite coal, included by those designated as pea and below, is it not?—A. Yes, sir.

Q. And such sizes of anthracite are utilized only and solely for steam purposes?—A. Except the pea coal which is used for domestic purposes largely in the anthracite region at home, where they know what it is worth.

Q. Other than at home?—A. The smaller sizes are used for steam purposes.

Q. And the prepared sizes, as they are called, sometimes called the domestic sizes, are in recent years a luxury, are they not?—A. I suppose you might call them a luxury. They are a necessity—a luxurious necessity.

Q. You said that you rather believed that if you took into account the thinner veins which, due to improved methods, can now be utilized to some extent, utilized as vein material, and the improved methods in breaker equipment, and so forth, that about 25 per cent

more than your estimate would be won from the anthracite region?—A. Yes, sir.

Q. That 25 per cent, however, would be very largely comprehended by the portion of the vein material that would be sent in sizes of pea and below, would it not?—A. Yes, sir; and what is taken from the culm piles, small coal.

Q. Speaking approximately, would not that represent about all of that 25 per cent?—A. Oh, no. There is quite a lot of pillar coal which would be made into prepared sizes, and all of the thin beds could be worked up into the various sizes, of which prepared would be quite a percentage.

Q. In speaking of "bed," that is a synonym with you for a "vein," is it not?—A. Yes, sir; the term "coal vein" is technically incorrect, but custom has made it proper with us. "Coal beds" and "coal veins" are the same thing.

Q. Since 1896 there has been a very large additional cost added to the expense incident to the manufacture of coal, so as to sell it in the market, along several lines, I may assume. I will ask you whether I am correct in a moment. Those lines represent, in part, the increased cost of the equipment of a colliery, the increased cost of the construction of a breaker, as well as its equipment, and the increased labor cost, and the inefficiency of the labor as compared with years prior to 1896, and also the fact that, speaking generally, since 1896, the mining companies having exhausted the better, purer, and thicker veins, are entering into the mining, and have been so for ten years last past, of the thinner, more laminated and dirty veins. Am I not right in that statement?—A. Yes; entirely.

Q. Can you give us any idea of the additional cost of mining a small vein, in view of the top rock which has got to be taken down, even though the vein material may be as good as a thicker vein that in the past years has been mined advantageously?—A. I have not investigated that very closely, but there is an additional cost, of course. The thin vein requires additional cost in a number of ways. I suppose that a vein 2½ feet thick in the anthracite region would cost from a half to twice as much as a vein 5 or 6 feet to mine per ton.

Q. Have you ever had occasion to examine into these matters for the purpose of writing articles about them for any of these papers which have to do with the anthracite trade especially?—A. Not recently. That article to which we have referred to-day is the last that I have written that had anything to do with these things.

Q. I see, however, you did speak of some of these matters which I have called your attention to, in the issues of the Bond Record, to which the Government's counsel called your attention this morning?—A. Yes, sir.

Q. Prior to 1896 the productive capacity of the collieries in the anthracite field was considerably in excess of the market demands, was it not?—A. Yes, sir.

Q. And the market demands have been growing nearer to the productive capacity of the collieries each year, until within the last few

cars it is practically up to the colliery capacity, is it not?—A. Yes, sir.

Q. So that, say, for four or five years last past the market has taken—that is to say, has purchased the tonnage that would represent approximately the capacity of all the mining companies in the anthracite field, having in mind the necessary restrictions, including holidays, Sundays, breakages, and matters of that kind that are beyond the control of the carrying company. Is not that a fair statement?—A. I think that is so. I think it is eminently so with reference to the year 1907.

Q. Is it not practically so, so far as your knowledge leads you to express an opinion upon it, since the anthracite strike of 1902?—A. Yes, sir; the condition of the anthracite region now is practically one in which they have, so far as the indications would show, reached their maximum production, unless they can work more days per year. The last several years the increase of production has been due mainly in the ability of the northern field to work more days per year than it did previously. When the northern field gets to its maximum number of days' work per year the anthracite region, in all probability, will have arrived at its maximum production. In other words, the daily output of the anthracite region has remained stationary for a number of years.

Q. In the northern field at least, in the last few years, those engaged in mining operations, speaking practically, now, and not to be exact to the day, have worked as many days as the miners would work, saving such days as the breakers could not work, due to stoppages incident to accident, and things of that sort; in other words, conditions which are beyond the control either of the buyer or the seller of the product?—A. That is generally true; but occasionally there have been days when they would shut down for a while because they had an accumulation of the product that did not move off or because they had such an accumulation, say, of small coal which they had to wait a day or two to allow that to pass away—something of that kind. They have endeavored to work all the days they could, taking into consideration the various conditions affecting the trade.

Q. Weather conditions affect the ability to work collieries every day, do they not?—A. Yes, sir; there are a good many collieries idle now because they can not get water.

Q. And weather conditions, especially in the winter season, interfere with the traffic; that is to say, delay the movement of cars on the railroads which connect with the collieries, do they not?—A. Yes, sir.

Q. And then they have got a great many holidays, which are maintained by the miners, and which they observe nowadays, have they not?—A. Yes, sir; more than they had before.

Q. Saints' days and Mitchell Day and other days of that kind?—A. Yes, sir.

Q. The anthracite market is rather a fastidious one to supply, is it not?—A. Yes, sir; at least it used to be. I think it is getting a

little bit less so now, because they are compelled to take what they can get, in a certain sense.

Q. Prior to the strike of 1902—in other words, prior to the time when the demands approximately equaled the supply—the market was very fastidious, and coal sold on its looks rather than on its quality, did it not?—A. In a very great many cases; yes, sir.

Q. So that there was a phrase which was familiar to those dealing in the trade, "No shine, no buy." Do you remember that?—A. Yes, sir.

Q. Coal which had a dull luster, though of good burning quality, could not be sold; is not that right?—A. That was so at one stage of the trade at one time.

Q. Is it not so to-day?—A. Yes, sir.

Mr. TODD. I object to this line of cross-examination unless defendants' counsel make the witness their own, as the cross-examination is far beyond the subjects touched upon in the direct examination.

Judge CAMPBELL. We will proceed with this line of cross-examination, and it will be for the court to determine whether or not this is proper cross-examination.

By Major WARREN:

Q. There is much good coal of a dull luster, which you found in your investigations that you detailed to the Government's counsel, is there not?—A. Certainly.

Q. In those years when you were making those investigations, did you not discover there were great difficulties in the preparation of the coal, due to the lack of a uniform standard as to sizes, and also a lack of uniform standard of preparation as between one operator and another? That is to say, one would put in a larger proportion of refuse than another, and one would not standardize the sizes as well as another?—A. Yes, sir; there was some time previous to this. I think at the time that was made the sizes had been standardized some years previously.

Q. That is prior to 1896?—A. Yes, sir; I think so.

Q. You are not sure about that?—A. I am not positive, but I think that was the case. Of course, all the operators would put in just as much refuse as the market would take, but the buyers had inspectors on hand to determine that and regulate it.

Q. What proportion of the coal which you made an estimate upon would be represented by the coal of dull luster?—A. I am not sure as to that. The coal near the ends of the basins; for instance, Forest City, and down Nanticoke way, and Shamokin field, and Lykens Valley region, and places of that kind; some of the Buck Mountain vein; some of the Dunmore seams were dull and did not go as readily as the other coal. The Lykens Valley coal, of course, is an exception, being red-ash coal; nearly all the red ash.

Q. In your investigations for the purpose of the preparation of this geological survey, did you ascertain that many of these operations, other than those owned by the coal companies controlled by

the railroads, had been opened and developed by the aid and assistance of the railroad coal companies?—A. Some of them had; yes, sir.

Q. And that they had built into those collieries spur lines for the purpose of getting the coal from the collieries?—A. Yes, sir; and loaned them money, too, for the purpose of equipping the mines.

Q. You found that there were many cases of leases which provided for the tonnage being shipped by a certain designated railroad?—A. Yes, sir.

Q. Very frequently the coal being leased by the operator from the coal company which was controlled by the railroad?—A. Occasionally; yes, sir. In other cases the coal was shipped over a certain railroad in consideration of the money borrowed from the railroad, and the money was returned by reduction of freight or something of that kind until the loan was paid back.

Q. In your estimate of the tonnage shipped, which was one of the exhibits of the Government, did you include tonnage shipped from individuals who sold their own coal in the markets?—A. Yes, sir.

Q. As well as those who sold to railroads by contracts?—A. Yes, sir.

Q. And as well as the railroad coal companies' tonnage?—A. Yes, sir.

Q. In other words, those three classes of tonnage were included?—A. Yes, sir.

Q. Counsel for the Government called your attention to a table upon page 502 of the Bond Record of June, 1896, as I understand it, which was read into the record. That shows the percentage of shipment for the year 1895 of the various railroads leading into the anthracite field, the percentage of allotment for 1896. This percentage of allotment, as you understood it, was based upon the colliery capacity of the various collieries of the anthracite region as learned by experience and previous knowledge of their capacity, was it not?—A. Yes, sir; I presume that it was.

Q. I notice in the issue of this Bond Record of March, 1896, a statement of your own, which I now read: "There are considerable areas of good coal that can not be marketed, or at least are considered by the railroads as unmerchantable, solely because of a rusty appearance, which spoils its bright look, but in no way affects the burning or fuel quality." That is a correct statement of the situation at that time, is it not?—A. Yes, sir.

Q. Even as of the date of 1896, is it not true that there was considerable doubt in the minds of those best able to judge, including yourself, whether the thin seams or veins then remaining and in their virgin state could be mined at any profit at all?—A. Yes, sir; there was. That is the reason they were not included in that estimate. There had been attempts to mine some of them, but they stopped it.

Q. Is it not a fact, as you have observed conditions since 1896, that such veins are only able to be mined at a profit in conjunction with

veins of a better quality on the same property?—A. Yes, sir; that is usually the case.

Q. But the cost of the mining of those veins, of course, enters into the colliery cost of that particular operation?—A. Certainly.

Q. In your estimate of available coal in the ground, have you taken into account the loss occasioned by squeeze in the veins in the various properties as they are being developed?—A. Yes, sir; that estimate takes into account all sorts of mining troubles that have been in the past; squeezes, barrier pillars, faults, floods, everything, anything that affected the mining of coal is reflected in that tonnage per acre.

Q. Would it take into account such squeezes as I gather you are familiar with a year or two ago in the city of Scranton, on the Lackawanna, on the west side, which took a hundred or more acres of coal and destroyed it?—A. Yes, sir; the Lackawanna had squeezes before that date, and of course they were included in that.

Q. They are to be anticipated, then, in the beginning of a colliery operation, together with the matter of its initial or developing cost, the loss of large areas due to squeezes that can not be foreseen at the time of the opening or developing of those mines?—A. It could be covered by the experience of the past only. Of course there is a liability, as the mines are more and more exhausted, for this item of squeeze to be somewhat increased over what the condition was before they were so far exhausted. Those were speculative things which did not come within the province of this estimate.

Q. I call your attention to a portion of an article of yours in the Bond Record of May, 1896, upon page 370, as follows: "In using this yield of 650 tons per horizontal foot-acre for the future in this basin we have given considerable weight to the fact that the past tonnage has all been obtained from the shallow parts of the basin and along the outcrops, where it could be most cheaply mined, and the maximum yield obtained, leaving the great portion of the tonnage of the future to be won from the deeper parts of the basins, requiring larger consumption of coal at the collieries for steam power to hoist the coal and pump increasing quantities of water from mines, which will be continually growing deeper with time. In addition to this, the question of troubles, squeezes, etc., to which previous reference has been made, and many other items of expense which not only increase the cost but decrease the yield, are to be considered in the mining of the deeper parts of the basin, in view of which we consider the above yield per acre ample for the future of this basin, notwithstanding the improvements in machinery and methods of preparation, the saving of the smaller sizes, and the prospective stripping in certain portions of the region." Do you recall that phraseology of yours?—A. Yes, sir.

Q. And that correctly represents your view at the time it was written as to the future developments and increased cost of mining, and the risks and hazards incident to the basins?—A. Yes, sir. Notwithstanding that the improvements in the method of burning coal have enabled us to realize considerably more than I anticipated when

that was written. Therefore, I say that perhaps 25 per cent should be added to this to represent the possible yield, notwithstanding that statement.

Q. But the adding of the 25 per cent runs counter to that statement, does it not?—A. Yes, sir; but the statement holds all right notwithstanding that. A goodly percentage of this 25 per cent is due to washing the culm piles, which came in after that date, and the utilization of those small sizes, which was not anticipated to such a great extent.

Q. Those are sizes which, of course, come in competition with the products?—A. Yes, sir.

Q. I read you from page 100 of the Bond Record, the issue of February, 1896, from an article of yours where, speaking of the fear due to matters which are encountered in the lower veins, you say; "In view of these facts, it must be evident that while the Wilkes-Barre region of the northern field contains a plentiful supply of fine, thick coal, seam above seam, to the number of 10 or more, it is also evident that the mining is very hazardous, particularly in the deeper, unworked parts, from which the future supply must come, and that to win it much more expense is required, both in the mining as well as in the first cost of the plants, than in the more scantily supplied measures in the north end, where there is no buried valley and not much gas to speak of, where the weight of the strata is less, requiring smaller pillars, which may eventually be robbed out, allowing the comparatively valueless surface to fall in, with a certainty that such a cave or crack of the strata will not be accompanied by a flood of water and sand to drown out the mine." That is a correct statement of the situation in the vicinity of Wilkes-Barre, is it not?—A. Yes, sir.

Q. Do you know the difference in the cost of the equipment of breakers, including machinery and appliances, in the last five years so as to compare with at the time you were making these investigations for the Geological Survey in 1896?—A. No; I could not say that I do.

Q. Of course, you recognize a very large increase in all sorts of materials?—A. Certainly.

Q. And in the machinery and equipment necessary, the jigs, and other things, that are now put in breakers?—A. Yes, sir.

Q. You know, speaking generally, they have to have a water supply now in the breakers which they did not have before the use of jigs?—A. Yes, sir; the manufacture of coal has been revolutionized in the last ten or fifteen years.

Q. And the expense, too; is not that right?—A. Yes, sir; of course expense attends all those new manufacturing materials.

Q. In the issue of this Bond Record of August, 1896, on page 3, I note this, being an article of yours: "Thus it appears that every ton of large coal formerly used for steam sizes that is ground down into the smaller sizes now demanded by the market results in a loss, at the above prices, of about 30 cents per ton to the operator who

leases his coal land, and about 40 cents per ton to the corporation which both owns as well as operates; or, in other words, 30 cents loss to the producer and 10 cents to the landowner." That is a correct statement of the situation, is it?—A. Yes, sir; of the situation at that time. That is borne out by an actual test, I believe. That remark applies with more weight, perhaps, to the northern coal field than to the southern, because the wholesale prices were somewhat different in the two.

Q. Upon page 7 of the same issue, in the same article, which is yours, this appears: "We tried to explain in some of the previous numbers of the Bond Record that there is much good coal of dull luster not marketable at present because it is not bright enough to suit the fastidious market; also the coal of the thin or very deep-lying beds, which is too costly to be profitably mined at present prices; and to a certain extent, therefore, coal of the character referred to has been excluded from our estimate. We have also shown how limited is the probable tonnage supply, and it will not be a great many years before some of the interests will be depending upon this unprofitable and costly coal for their dividends." Is that a correct statement of your views?—A. Yes, sir; I think some of them are there now.

Q. Can you recall that in some one of your articles in connection with the business you referred to the prepared sizes or the domestic sizes, as they are sometimes called, as a luxury?—A. Yes, sir; I think I remember it. It is in that book somewhere.

Q. I call your attention to this, upon page 7 of the Bond Record, issue February, 1896, where you say: "The mining of the past has been at those points where the coal was thickest, best, and most accessible, where the mining could be done at the greatest profit to the operator, and those parts where the beds were thinner and more expensive to mine were left for the future; and it is the expressed opinion of many who are well posted upon mining matters and conditions that with some mining interests that future is upon them. Their fine, thick veins of clear coal, either above or not far below water level, are nearly exhausted, and cheap and profitable production at present prices will soon be a matter of history only, and the future dividends and sinking funds (if they ever have any) for retirement of capital invested, bonded and other debts, will have to be dug out at greater cost from those poorer veins, lower in the measures, many of which ten, or even five years ago were thought to be unworkable; or in other localities, deeper mining, with its attendant expenses, will be required."—A. Yes, sir; that is unquestionably a fact.

Q. I understood you to refer this morning to two certain estimates or theories as to the coal in the ground for future mining, one made by Mr. Smith and the other made by Mr. Harris. Did you make such reference?—A. Yes, sir; we spoke about them.

Q. This Mr. Smith was who and associated in what way with mining operations?—A. He was one of the geologists on the Pennsylvania state geological survey, and had charge of the Pottsville office. He

had charge of the southern and I had charge of the northern field. He was asked by the coal waste commission, appointed by the governor, of which I was a member, to make an estimate of the total tonnage of anthracite in the State, and he did so from the geological survey map, having no reference whatever to the amount that the different interests controlled at all.

Q. Do you know the bases of his estimate; that is to say, the factors used?—A. No; I do not. But in a general way I know it was an entirely different method from mine—entirely different, but it was a reasonably accurate way of getting at the total tonnage.

Q. His had to do with production?—A. His had to do with the production, and it is noted there in that book just what it had to do. It had to do with production, and it included the probable output of the culm piles and the mine pillars and thin beds down to 2 feet thick.

Q. Do you know what he took as the estimate per foot-acre yield?—A. I do not know that he used the foot-acre proposition.

Q. You do not know what he did use in the way of bases or factors for his estimate?—A. No, sir.

Q. But you do know that his estimate had nothing to do with the question of that which could be shipped, as contradistinguished from that which could be produced?—A. No, sir; it was with reference to production.

Q. Mr. Harris's estimate, do you know upon what that was based?—A. No; I do not know. I had the article in my possession once upon a time, and I suppose I have it still. It was published in a magazine. It was a sort of a general estimate of the whole field based on his general knowledge, and did not go into the matter in detail at all. It was all summed up in a short magazine article of perhaps three or four pages.

Q. Your idea is that the difference in figures between what can be produced and what goes to market is approximately 10 per cent?—A. Approximately; yes, sir.

Q. But you say their figures do not differ from yours even as much as 5 per cent?—A. I say if you correct either of the estimates so as to make them on the same basis with this one—if you add 10 per cent to my figures, and then add 25 per cent of that sum, and then reduce them to the estimate made for the same period, deduct the shipments between the different dates, they will be within less than 5 per cent of each other.

Q. What did you use the 25 per cent for?—A. For the amount that goes to market now of small sizes from the culm piles, and that we did not produce at that time, and the thin beds that did not figure in my estimate.

Q. You do not know that they were in their estimates, either?—A. Yes, sir; I do.

Q. You do understand, do you, that in their estimates they included the thin veins first, and second, they included modern equipment and machinery and appliances in breakers and changed trade conditions in the matter of the increased demand for the smaller

sizes—you know they took those into account?—A. Yes; they took those into account.

Q. How could they in 1893 take into account conditions which did not arrive until ten years afterwards?—A. They speculated on it. They estimated those things would be done.

By Judge CAMPBELL:

Q. They anticipated?—A. Yes, sir; they anticipated the conditions.

By Major WARREN:

Q. The whole thing was a matter of speculation?—A. Yes, sir. The tendency when I made my estimate and when these were made was toward an improvement, these improvements; they were coming up, and new inventions and methods all the time, and the tendency was in that direction, and they looked ahead in making these; that is, Mr. Smith did. Possibly Mr. Harris may not have included them so much. I can not say.

By Judge CAMPBELL:

Q. They more or less anticipated the modern conditions?—A. Yes, sir.

By Mr. TODD:

Q. It was only Mr. Smith's article that you compared with yours in the examination?—A. Yes, sir; that was all, because I considered his estimate more positive and more modern than Mr. Harris's, although Mr. Harris made a very excellent estimate, I thought, at the time. He got at it in a quicker way, which was liable to greater error, but it was very good, all right. He jumped at some of his conclusions without figuring them up.

By Major WARREN:

Q. Mention was made this morning of your connection, through your writing, with the Anthracite Coal Strike Commission. Do you recall that the strike commission, in commenting upon the capital required to open and develop properties, spoke of the range of the cost of equipping and opening and developing being between the figures of $250,000 and $750,000?—A. No; I do not recall that.

Q. Whether recalling it or not, would you say that fairly represents the range of cost of opening and developing a colliery; that it would cost between $250,000 and $750,000 to open and develop a colliery operation?—A. Yes, sir; depending on conditions. Some years ago, about the time that report was written, or a little bit before, it was usually considered that a colliery could be opened and be ready to ship in two years' time, and at a cost of about $1 per ton for the proposed capacity. If they expected to ship 200,000 tons a year it would cost approximately $200,000 to do it; if they expected to ship 500,000 tons a year it would cost $500,000, approximately. But the prices have been increased since that time; lumber is higher, machinery is higher, and it takes a great deal more machinery and more

cost to put a colliery in position now than it did then, so that those prices must be added to in estimating now.

Q. Does it not cost more to open and develop thin veins rather than thicker ones?—A. Yes, sir; every item of cost is greater now than it was then—the opening of the mine, the mining of the coal, preparing the coal after you get it out of the mine—all those things are higher now.

Q. Is it not a fair matter, as a business proposition, to include in your cost of such an enterprise the fact, which separates the coal business from any other, that each year you are exhausting your capital?—A. Certainly. A coal company ought to have greater profit for dollar of capital invested than a manufacturing enterprise, ordinarily speaking, because the manufacturing enterprise is a perpetual operation, and will last as long as the people continue to operate it. A coal operation is of limited life. When the coal is gone, the business is gone, and if you do not get your capital out with your interest in the meantime, you have lost money. That is all.

Redirect examination by Mr. TODD:

Q. You spoke of the Bernice region consisting of about 2,000 acres, you said. That would be just a little less than 3 square miles, would it not?—A. Three or 4 square miles.

Q. Is the general character of the coal from that region the same as from the anthracite coal regions proper?—A. Some portions of the anthracite coal regions; yes. It all goes as anthracite; yes. It all sells in the market as anthracite coal, and, properly speaking, it is anthracite coal. I think there are probably 20,000,000 tons of coal there, in that neighborhood. The tonnage was so limited that it was not considered worth while including it in this estimate.

Q. Anthracite coal is in very general use among the rich and the poor, is it not, in Pennsylvania, New Jersey, and New York, the New England States, and certain other parts of the United States?—A. Yes, sir.

Q. Will you explain a little more fully, then, what you meant by referring to it as a luxury in this article of which you spoke?—A. I meant that it cost so much that it was in the same line as other costly things that poor people were compelled to buy sometimes, but that they really considered it a luxury; that they would be very glad if they could get along with something cheaper.

Q. But they could not?—A. But they could not, under the conditions.

Q. So, to use your own phrase, it is a necessity as well as a luxury in the sense you speak of?—A. Yes, sir.

Recross-examination by Judge CAMPBELL:

Q. Speaking of it as a necessity, there are other fuels besides anthracite coal that the poor can use?—A. Yes, sir.

Q. For instance, by-products of the bituminous coal—coke, and the like?—A. Yes, sir.

Q. If they were taught how to use it?—A. Yes, sir.

Q. And had the habit and custom of using it?—A. Yes, sir.

Q. Are you aware that perhaps the highest-priced exceptional anthracite coal that is sold in the market is used with advantage by the poorest people?—A. Yes, sir; I referred to that in this book.

Q. You say you have already referred to that in the publications you have made?—A. Yes, sir.

Q. Can you recall the reasons why it is an economical thing in itself?—A. My reason for that is this: That those coals catch up quicker into a hot fire, and they maintain their combustion longer without going out. That is to say, when they do finally go out there is not so much unburned coal in the ashes as in the cases of the harder grades of anthracite coal. Another thing is that the poor people on the East Side, New York, largely buy their coal by the bucketful. These softer coals are much lighter than the harder coals; it takes more bucketfuls to make a ton than it does of the hard coals. The peddlers are on to that fact. They can buy a ton of Lykens Valley coal by weight, 2,240 pounds, and they can get more bucketsful out of a ton than they can out of the heavier coals, so that they make more money out of the softer coal; and, consequently, it is to the advantage of the peddler or retailer to have the people buy it. And then it is to the advantage of the people who burn it.

Q. There is less waste?—A. There is less waste.

Q. They get more for their money, even at the higher price?—A. They think they get more for their money. Now, they have learned by time and experience to know those particular coals by the color of the ashes they make, and they think that a coal that makes a gray ash, although it may be exactly the same in price, weight, and everything else, is not the same coal and will not give them the satisfaction. Consequently, they are particular that they have the red-ash coal, because then they know that they are getting what they want. That is my explanation of the reason.

Q. My recollection is that on the hearing of another case, Mr. Thomas M. Richards, the general coal agent of the Philadelphia and Reading Coal and Iron Company, testified that the best market he had for Lykens Valley coal was amongst the operatives in the factories of New England, where the people built early fires, which burned out, and, with a slight refuse, the coal was actually consumed; they had a short fire, they made their breakfast and went to work, and there was practically no waste.—A. If there was waste, they were able to use it over again in the next fire they built. Those are the points that I think cause this coal to be used, and the people are willing to pay a higher price for it.

Q. Do you recall the difference in price of, say, the best class of Lykens Valley as compared with what is called "free-burning white ash?"—A. I think the difference in price is 50 cents to $1 a ton. I do not know but the wholesale price is 50 cents more. The retail price runs up sometimes, I suppose, to a dollar or more higher.

(Adjourned until Wednesday, December 16, 1908, at 10.30 o'clock a. m.)

Met pursuant to adjournment at New York, Wednesday, December 16, 1908.

Present: The Examiner, and Messrs. McReynolds, Todd, Campbell, Moot, Warren, Torrey, Schaperkotter, and Seager.

It is agreed that counsel for the Government may read in evidence extracts from certain of the annual reports of the defendants with the same effect as if those reports were produced and read from by the secretaries of such companies in obedience to subpœnas, subject to the same objections which could be made to them if so produced by the secretary in each instance, reserving the right of counsel to state objections hereafter, in accordance with the stipulations already in the record, and reserving also the right to counsel for the defendants as they may be advised to read into the record such other portions of these reports as they may find necessary. In particular, counsel for defendants now note the objection that the statements or admissions of one corporation are not statements or admissions that are competent or material evidence against another corporation.

Mr. Todd read in evidence the following extracts from the reports produced:

From the report of the president and managers to the stockholders of The Philadelphia and Reading Railroad Company for the year ending November 30, 1890, signed by A. A. McLeod, president:

(Pages 10 and 11:) "No increase of the equipment had been made in recent years until in 1889, and nearly the whole of that which has been added is taken up in handling the increased merchandise traffic alone. The following table will show that if adequate facilities had been provided to maintain your due share of this business the anthracite tonnage of your company in 1890 should have been 12,000,000 tons instead of 7,500,000, and that almost the entire growth of consumption during the past thirteen years has been absorbed by our competitors, who have increased their facilities for placing their product upon the markets to keep pace with the growth of the business:

Year.	Total shipment of anthracite coal.	Percentage transported over Philadelphia and Reading R. R.	Tons transported over Philadelphia and Reading R. R.[a]	Tons if proportion had been maintained.
1877	20,823,179	32.85	6,842,105	
1878	17,605,262	29.04	5,112,219	5,783,328
1879	26,142,689	28.47	7,442,617	8,587,873
1801	23,437,242	25.32	5,933,923	7,699,134
1882	28,500,016	24.35	6,940,283	9,362,255
1883	29,120,996	24.04	7,000,113	9,565,952
1884	31,793,027	23.31	7,410,954	10,444,009
1885	30,718,293	21.62	6,641,194	10,090,959
1886	31,623,530	21.24	6,716,837	10,388,329
1887	32,136,362	20.84	6,697,217	10,556,794
1888	34,641,018	21.81	7,555,252	11,379,574
1889	38,145,718	18.81	7,175,319	12,530,868
1888	35,407,710	20.13	7,128,695	11,631,433
1890	35,855,175	20.96	7,517,646	11,778,425

[a] The tonnage shown in this column includes only the coal originating on and transported to market over the lines of the Philadelphia and Reading Railroad Company.

"It seems from the foregoing to be quite obvious that but for the defect in the development of your properties the revenues of your business would have enabled you to continue the payment of dividends on your capital stock.

"There is now no reason for the continuance of this policy, and it is expected that, upon the completion of the plans now projected, the company will be able to command a fair proportion of the future increased traffic and to make great progress toward restoring the business of your company to the position which it should occupy in the trade. There have been contracted for, upon the most favorable terms, for delivery during the current year, 5,200 freight cars, of which 3,200 are large twin-hopper gondola coal cars and 2,000 are for use in merchandise traffic."

"PORT READING RAILROAD.

(Pages 17 and 18:) "In another part of this report the lack of means of placing the product of your mines upon the markets and the consequent shrinkage of production in proportion to that of competing fields is commented on. A marked illustration of the necessity of providing additional facilities for the distributing of anthracite coal in New York Harbor and all tide-water points tributary thereto is found in the fact that at the time of writing this report there are more than 1,000 cars loaded with coal standing on the side tracks in Jersey City because of the lack of dock facilities for transferring the coal to vessels; and on account of the restrictions which these limitations impose upon your traffic the management is now obliged to transport coal from Port Richmond through the Delaware River and around to New York Harbor, encountering all the perils of coast navigation at this season of the year, and at an expense largely in excess of all-rail freights. With the view of meeting these wants and other disabilities under which your company has labored ever since the day it opened its mines, for want of unrestricted access to the waters of New York Bay, the greatest distributing center in the country of anthracite coal, your board has determined to promote the construction of a line of road, to be under the control of your company, to extend from the vicinity of the terminus of the Delaware and Bound Brook Railroad, near Bound Brook, N. J., to deep water, in the Arthur Kill, a distance of 20 miles, at a point readily accessible to the waters of New York Bay and New England ports by large vessels. Plans have been completed for the construction of this line, with adequate terminals for the storage and shipment of coal in quantities limited only by the demands of the markets. Over 300 acres of land have been acquired for terminal purposes bordering on the waters of the Arthur Kill. Work will be speedily commenced, and prosecuted with vigor. Conservative estimates show that the earnings of this line will be sufficient to meet all charges on its cost and leave a large surplus; it will furnish the means of supplying the markets with your just proportion of the coal tonnage at

all times. The advantage of the construction of this line in the increase of tonnage on nearly all other parts of the system, without regarding the increase of product of the coal and iron company, can scarcely be estimated, but it is certain that it will add a large increase of traffic earnings. It was anticipated that work on this line could have been commenced before this time, but it was found necessary to make several surveys in order to avoid all grade crossings of other railroads, and your board is pleased to announce that the line adopted is of favorable grades and of almost perfect alignment, the maximum grade being only 15 feet to the mile."

From the report of the president and managers to the stockholders of The Philadelphia and Reading Railroad Company for the year ending November 30, 1891, signed by A. A. McLeod, president:

(Pages 10 and 11:) "In the last annual report attention was called to the failure of the company for many years past to make adequate provisions in the development of the mines, in rolling equipment and terminal facilities, to enable it to retain the place in the coal trade which it ought to command. While there has been a considerable increase of the tonnage, the revenue from the anthracite coal traffic has not yet reached the proportions to which the company is fairly entitled, and the concessions made by your board toward the preservation of harmonious relations with other companies and the maintenance of fair and reasonable prices for the product of the mines continue to be out of proportion to the capacity of the collieries, the amount of capital invested in both productive and undeveloped coal lands, and the facilities possessed for the distribution of coal in the markets, as compared with those of the other coal-carrying roads. Your board has never questioned the policy of making due concessions to competitors, who with yourselves are engaged in producing a commodity far in excess of the demand of the markets, but the proportion of the business allotted to this company in years past, when its financial straits and lack of facilities did not permit it to mine and distribute its fair proportion of the increase of tonnage, must not be taken as the measure of the business to which it is entitled in the conditions which now prevail since its reorganization and rehabilitation. It is to be expected, therefore, that out of the regard that is due to the great interests involved and a proper consideration of the importance of the subject to the general public, as well as from a just recognition of the equitable right of this company to a larger share of the traffic, your board will be able to secure for your company what its investments entitled it to without the sacrifice of revenue or the disturbance of existing harmonious relations.

"The experiences of the past year have emphasized the necessity for other means than those hitherto employed in the distribution of anthracite coal in New York Harbor and its tributary tide-water points. The early completion of the new line to Port Reading on the

Arthur Kill will remove the limitations upon the growth and extension of this traffic in that quarter, from which the business has suffered in the past. The work is progressing rapidly and will be ready early in the year for operations long in advance of the season when the heaviest traffic is to be expected.

"During the year a new company has been organized under the name of The Tamaqua, Hazleton and Northern Railroad Company for the purpose of building a line from the Catawissa branch to the vicinity of Hazleton, connecting with the Delaware, Susquehanna and Schuylkill Railroad, with which traffic arrangements have been entered into by which we are guaranteed a minimum of 1,000,000 tons of anthracite coal. The new line has been completed and is now in operation."

From the report of the operations of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company for the year ending November 30, 1893, signed by J. S. Harris, president, and J. S. Harris, Edward M. Paxson, and John Lowber Welsh, receivers:

(Pages 20 and 21:) "A contract was made with Coxe Brothers & Co., under date of May 14, 1891, for the transportation over the Reading Railroad system of a large tonnage of coal from the mines of that company to New York tide water and to other markets, the minimum amount to be furnished for transportation to New York tide water to be 1,000,000 tons per annum.

"In order to transport the coal to be furnished under this contract, a railroad 10 miles in length was constructed by the Reading Company to connect its lines with those of the Delaware, Susquehanna and Schuylkill Railroad, which was controlled by Coxe Brothers & Co., and a large coal tonnage had passed and was passing over this road; but the division of the freight rate as between the two railroad companies was felt by the receivers to be so inequitable to the Reading Company, as on the greater part of the tonnage it allowed the Delaware, Susquehanna and Schuylkill Railroad Company an average of about 73 cents per ton for gathering the coal, hauling it an average of about 12 miles to Roan Junction, and shipping it at Port Johnston, leaving for the Reading Company only 80 cents per ton for hauling the coal 168 miles to Bound Brook Junction, that they notified Coxe Brothers & Co. that after August 15, 1893, they would no longer transport their coal under that contract, offering, however, to continue to carry the coal upon terms similar to those which are ordinarily accorded to other railroad companies for the exchange of similar business. This offer was, however, not found satisfactory by Coxe Brothers & Co. and the transportation of their coal has, therefore, been almost entirely lost to the Reading Company."

(Page 27:) "The relations with all connecting railroads are friendly and cordial, and in respect to the principal railroad systems which were lately in close alliance with the Reading Company, the exchange of business and the division of earnings arising therefrom

is made on the same lines as before the leases of 1892, and in accordance with the rules that have been agreed upon during many years of more or less active rivalry."

From the report of the operations of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company for the year ending November 30, 1895, signed by J. S. Harris, president:

(Page 14:) "The most careful estimate that has been published accords to Reading interests the control of over 33 per cent of all the anthracite in Pennsylvania, and its claim to the possession of this proportion of the coal in the ground is generally conceded. At one time, in 1869 and in 1871, Reading mined and carried its full share of the total production, and so late as the year 1878 it had nearly 29 per cent (28.97). Since that time, while its production has grown steadily, it has increased much less rapidly than that of its competitors, the companies engaged in mining in the northern, or Wyoming, coal field far outstripping it in the race for tonnage. This comparative retreat on the part of Reading has been partly due to its poverty, which made it difficult to raise the money required to develop its property, and partly to its conservative policy, which led it to be more interested in getting remunerative prices than in increasing its output."

(Pages 15 and 16:) "In February, 1892, the Reading Company leased the Lehigh Valley Railroad and the Central Railroad of New Jersey, and made at the same time an agreement to buy the coal of their allied coal companies—The Lehigh Valley Coal Company and The Lehigh and Wilkesbarre Coal Company—and to pay these companies for their coal, delivered into cars at the mines, certain percentages of the prices that might from time to time be received for coal delivered at tide water near New York. The tide-water price of coal being largely made up of the two factors, the price at the mines and the charge for transportation thence to tide, this agreement necessarily made the freight rate also a percentage of the price realized for the coal at tide water, and in order that the leased railroads should earn the rentals which Reading had agreed to pay it was necessary that their allied coal companies should be allowed to mine freely, and that the coal should be sold at remunerative prices. In order to accomplish these two purposes, it was necessary to curtail the product of Reading's mines, lest there should be an oversupply of coal sent to market. It thus came to pass that in the year 1892 Reading's percentage of the total output fell to 19.55 per cent, and in 1893 to 19.35 per cent. The true cause of this falling off in the relative productiveness of Reading's collieries was not generally understood, but the fact led to general incredulity in regard to its capacity to maintain its place in the race for tonnage, and vigorous attempts were made to induce it to take a smaller percentage of the total anthracite business than it had ever carried."

From the "Fourth Annual Report of the Reading Company for Fiscal Year ended June 30, 1901," signed by George F. Baer, president:

"CENTRAL RAILROAD COMPANY OF NEW JERSEY.

(Page 13:) "In January, 1901, Reading Company purchased 145,000 shares out of a total of 272,138 shares of the capital stock of The Central Railroad Company of New Jersey—the price paid being $160 per share. This sum was paid by the sale of 60,353 first preferred shares and 34,275 second preferred shares, and the issue of $23,000,000 4 per cent collateral trust bonds due in 1951 which were secured by the deposit of the 145,000 shares of the capital stock of The Central Railroad Company of New Jersey, 29,900 shares of the capital stock of the Perkiomen Railroad, and 4,400 shares of the capital stock of the Port Reading Railroad Company.

"The acquisition of the control of the Jersey Central is not only of enormous advantage because of the additional facilities given to the system, but through this acquisition the Reading system now owns and controls about 63 per cent of all the unmined anthracite coal in the State of Pennsylvania.

"On April 12, 1901, the president of the Reading system was elected president of The Central Railroad Company of New Jersey."

From "Ninth Annual Report of Reading Company for Fiscal Year Ended June 30, 1906," signed by George F. Baer, president (p. 35):

Philadelphia and Reading Railway Company: income account for the year ended June 30, 1906, and comparison with year ended June 30, 1905.

	1905-1906.		1904-1905.	
RAILROAD.				
Earnings:				
From coal traffic	$17,198,247.07		$17,163,351.47	
From merchandise traffic	15,220,440.96		13,636,235.55	
From passenger traffic	6,216,316.25		5,717,399.37	
From miscellaneous sources	902,241.36		796,478.53	
From transportation of mail	120,795.11		118,324.99	
		$39,658,040.75		$36,832,069.91
Operating expenses:				
For maintenance of way and structures	3,195,152.18		2,738,215.40	
For maintenance of equipment	6,330,881.62		5,650,984.25	
For conducting transportation	11,896,369.94		10,387,502.86	
For general expenses	714,767.98		703,587.10	
		22,137,171.72		19,480,349.61
		17,520,869.03		17,351,720.30
Other expenses:				
For insurance fund			30,794.26	
For improvements	3,539,352.29		979,643.31	
		3,539,352.29		1,010,437.57
		13,981,516.74		16,341,282.73
Other sources (net earnings)		905,683.83		663,648.97
Net earnings		14,887,200.57		17,004,931.70
Fixed charges		9,502,728.96		9,645,769.48
Surplus		5,384,471.61		7,359,162.22

From "Eleventh Annual Report of Reading Company for Fiscal Year Ended June 30, 1908," signed by George F. Baer, president (p. 37):

Philadelphia and Reading Railway Company: income account for the year ended June 30, 1908, and comparison with year ended June 30, 1907.

	1907–1908.		1906–1907.	
RAILROAD.				
Earnings:				
From coal revenue	$18,577,272.11		$18,730,189.63	
From merchandise revenue	13,502,925.96		16,360,169.92	
From passenger revenue	6,211,933.58		6,399,172.94	
From mail revenue	117,801.32		120,537.44	
From excess baggage revenue	25,520.79			
From express revenue	607,407.69			
From milk revenue (on passenger trains)	213,286.68			
From other passenger train revenue	87,414.76			
From switching revenue	208,145.05		1,066,208.54	
From special train revenue	10,429.55			
From miscellaneous transportation revenue	1,123.98			
From revenue from operations other than transportation	315,620.45			
		$39,878,881.92		$42,676,278.47
Other income:				
Hire of equipment	1,657,131.49			
Income from securities, interest, etc.	194,060.40			
	1,851,191.89			
Less rentals	89,134.57			
		1,762,057.32		
		41,640,939.24		
Operating expenses:				
For maintenance of way and structures	3,803,045.97		3,606,192.34	
For maintenance of equipment	8,094,407.08		7,971,544.44	
For transportation expenses	12,437,316.51		13,138,259.86	
For traffic expenses	451,275.02		426,593.70	
For general expenses	672,251.48		746,740.96	
		25,458,296.06		25,889,331.30
		16,182,643.18		16,786,947.17
Other expenses:				
For additions and betterments		937,659.64		1,847,933.64
		15,244,983.54		14,939,013.53
Outside operations (net earnings)		1,023,656.10		852,657.97
Net earnings		16,268,639.64		15,791,671.50
Fixed charges		9,923,000.21		9,747,246.38
Surplus		6,345,639.43		6,044,425.12

From the report of the board of directors of The Central Railroad Company of New Jersey to its stockholders for the year ending December 31, 1891, together with supplemental report dated April 8, 1892, both signed by J. Rogers Maxwell, president:

"SUPPLEMENTAL REPORT.

(Pages 13 and 14:) "The board of directors submit the following additional statement for the information of the stockholders of The Central Railroad Company of New Jersey.

"Before the issue of the foregoing report, and as the result of negotiations extending through several months, your board have concluded a lease and traffic contract, under which your railroads

are now being operated by the Port Reading Railroad Company and in connection with the Philadelphia and Reading Railroad system.

"The lease to the Port Reading Railroad Company is for nine hundred and ninety-nine years. It secures to your company the 7 per cent dividend heretofore paid, together with one-half of the net earnings above 7 per cent up to the maximum of 10 per cent per annum. Performance of its covenants is guaranteed by The Philadelphia and Reading Railroad Company, and is further secured by a deposit of bonds in trust. In addition thereto, the Central Railroad Company will continue to receive income from certain real estate and other properties not included in the lease.

"This arrangement takes effect in its accounting as of January 1, 1892. It is intended to secure for your railroad its present traffic and its natural growth and development, and in addition, by the guarantee of common interest, the benefit of whatever traffic is controlled and influenced by the Reading system and is naturally tributary to your road and terminals. It prevents a diversion of traffic which might otherwise have resulted from the lease of the Lehigh Valley Railroad by the Philadelphia and Reading Company.

"It is fair to expect, as the further results of this alliance, with the cooperation of other large coal-producing companies, greater uniformity in the prices of coal, steadier employment for the laboring classes in the coal regions, the avoidance of needless and expensive competition between producers, and the establishment of economies which, without undue burden to consumers, will bring to the stockholders adequate returns for their capital.

"In both the lease and traffic contracts every safeguard has been provided for the preservation and development of your property.

"The independent organization of the Central Railroad Company will be maintained to discharge its obligations directly to the stockholders and bondholders, as well as to see that the provisions of the agreement are observed and the maximum rentals thereby secured."

From the report of the board of directors of The Central Railroad Company of New Jersey to its stockholders for the fiscal year ended June 30, 1906, signed by George F. Baer, president:

(Page 7:) "To the stockholders of The Central Railroad Company of New Jersey:

"The board of directors submit the following report for the fiscal year ended June 30, 1906:

"The operations of the company for the period are shown by the following statements:

INCOME ACCOUNT.

Gross earnings	$23,101,089.53
Operating expenses	12,779,866.54
Net earnings	10,321,222.99
Income from investments	1,151,197.19
	11,472,420.18

INCOME ACCOUNT—continued.

Renewals and improvements	$1,254,443.81	
Equipment depreciation fund	1,419,355.09	
Renewal and improvement fund	700,000.00	
		$3,373,798.90
		8,098,621.28
Taxes	556,709.97	
Interest on funded debt and guaranties	2,865,086.67	
Interest, miscellaneous	4,538.89	
Rentals of leased lines	2,386,380.22	
		5,812,715.75
Surplus		2,285,905.53

"Details of above will be found on succeeding pages."

From the report of the board of directors of The Central Railroad Company of New Jersey for the fiscal year ended June 30, 1907, signed by George F. Baer, president:

(Page 7:) "To the stockholders of The Central Railroad Company of New Jersey.

"The board of directors submit the following report for the fiscal year ended June 30, 1907:

"The operations of the company for the period are shown by the following statements:

INCOME ACCOUNT.

Gross earnings		$25,687,403.37
Operating expenses		14,164,118.16
Net earnings		11,523,285.21
Income from investments		1,175,653.07
		12,698,938.28
Taxes	$1,112,557.60	
Interest on funded debt and guaranties	2,945,800.01	
Interest, miscellaneous	92,488.89	
Rentals of leased lines	2,765,213.13	
		6,916,059.63
		5,782,878.65
Renewals and improvements	1,362,061.53	
Equipment fund	1,150,000.00	
Renewal and improvement fund	1,000,000.00	
		3,512,061.53
Surplus		2,270,817.12

"Details of above will be found on succeeding pages."

From the report of the board of directors of The Central Railroad Company of New Jersey for the fiscal year ended June 30, 1908, signed by George F. Baer, president:

(Page 27:) "To the stockholders of The Central Railroad Company of New Jersey.

"The board of directors submit the following report for the fiscal year ended June 30, 1908:

"The operations of the company for the period are shown by the following statements:

INCOME ACCOUNT.

Gross earnings		$25,587,176.81
Operating expenses		15,466,638.23
		10,120,538.58
Income from investments		1,432,539.02
		11,553,077.60
Taxes	$1,065,725.60	
Interest on funded debt and guaranties	2,934,576.65	
Interest, miscellaneous	86,605.65	
Rentals of leased lines	2,342,696.38	
		6,429,604.28
		5,123,473.32
Additions and betterments fund	2,000,000.00	
Taxes anticipated	300,000.00	
		2,300,000.00
Surplus		2,823,473.32

"Details of above will be found on succeeding pages."

From the fifty-second annual report of the board of directors of the Lehigh Valley Railroad Company to the stockholders for fiscal year ended June 30, 1906, signed by E. B. Thomas, president:

(Page 14:) "On October 13, 1905, your board authorized the purchase of the entire capital stock of Coxe Brothers & Co. (Incorporated), The Delaware Susquehanna and Schuylkill Railroad Company, The Drifton Water Company, The Oneida Water Company, The Beaver Meadow Water Company, and the Tomhicken Water Company. The properties so acquired were surrendered to your company on November 1, 1905, as going concerns, with accounts receivable, cash, stocks of coal and materials on hand, and without liabilities of any character other than current monthly bills and a contract for the purchase of one thousand 100,000-pound capacity steel coal cars, of which 333 had been delivered. To provide for the purchase of the above-mentioned properties, including the 667 cars not delivered, your board authorized the issue of $19,000,000 collateral trust bonds, bearing interest at the rate of 4 per cent per annum, under a trust agreement, dated November 1, 1905, with The Girard Trust Company as trustee, pledging as collateral security thereunder the capital stocks of Coxe Brothers & Co. (Incorporated) and The Delaware, Susquehanna and Schuylkill Railroad Company. These bonds mature at the rate of $1,000,000 each year in semiannual installments, beginning August 1, 1907, the last installment maturing February 1, 1926. Such of the net current assets of the companies purchased as were not required in the conduct of the business have been liquidated and credited on the books as a reserve

for the depreciation of those properties. The net results to your company from the operation of these properties since the date acquired, notwithstanding the suspension of mining for practically two months, have been sufficient to pay the interest on the bonds issued for the purchase thereof and provide a substantial amount which may be applied to the retirement of the same."

From the same report (p. 28):

TABLE 2.—*Lehigh Valley Railroad Company, comparative income account for the years ended June 30, 1906 and 1905.*

	1906.	1905.	Increase.	Decrease.
LEHIGH VALLEY RAILROAD COMPANY.				
Gross earnings:				
Coal earnings	$13,248,565.42	$13,530,337.42		$281,772.00
Other freight earnings	13,934,127.10	12,432,582.74	$1,501,544.36	
Passenger earnings	3,971,392.05	3,509,825.33	461,566.72	
Express earnings	367,706.36	337,107.75	30,598.61	
Mail earnings	217,745.88	207,660.74	10,085.14	
Miscellaneous earnings	1,050,319.82	1,258,328.74		208,008.92
Total gross earnings	32,789,856.63	31,275,842.72	1,514,013.91	
Operating expenses:				
Maintenance of way and structures	3,153,245.22	3,269,382.74		116,137.52
Maintenance of equipment	5,485,794.06	4,894,269.44	591,524.62	
Conducting transportation	10,891,953.73	10,179,037.79	712,915.94	
General expenses	621,217.71	587,011.36	34,206.35	
Total operating expenses	20,152,210.72	18,929,701.33	1,222,509.39	
Percentage operating expenses to gross earnings.....per cent.	61.46	60.52	0.94	
Net earnings	12,637,645.91	12,346,141.39	291,504.52	
Other income:				
Dividends on stocks	76,394.50	107,530.50		30,536.00
Interest on bonds	24,570.34	120,288.89		95,718.55
Interest on real-estate mortgages	20,616.53	23,119.50		2,502.97
Miscellaneous interest	284,545.71	149,315.86	135,229.85	
Rents, Easton and Northern Railroad		1,990.95		1,990.95
Net earnings from miscellaneous operations	402,124.69	50,764.55	351,360.14	
Total other income	808,851.77	453,010.25	355,841.52	
Total income	13,446,497.68	12,799,151.64	647,346.04	
Deductions from income:				
Additions and improvements to property	1,570,227.19	1,411,550.78	158,676.41	
Interest on funded debt	3,215,022.22	2,701,961.22	513,061.00	
Interest on equipment trust obligations	163,147.49	210,937.50		47,790.01
Rentals of leased lines and guaranties	2,295,723.00	2,304,473.00		8,750.00
Taxes	707,039.90	724,054.66		17,014.76
Miscellaneous deductions	43,754.36	53,285.81		9,531.45
Total deductions from income	7,994,914.16	7,406,262.97	588,651.19	
Net income	5,451,583.52	5,392,888.67	58,694.85	
LEHIGH VALLEY COAL COMPANY.				
Net income	318,489.19	635,548.34		317,059.15
Total net income	5,770,072.71	6,028,437.01		258,364.30

From "Fifty-fourth Annual Report of the Board of Directors of the Lehigh Valley Railroad Company to the Stockholders for Fiscal year Ended June 30, 1908," signed by E. B. Thomas, president (p. 22):

TABLE 1.—*Lehigh Valley Railroad Company, comparative income account for the years ended June 30, 1908 and 1907.*

	1908.	1907.	Increase.	Decrease.
LEHIGH VALLEY RAILROAD COMPANY.				
Revenue from operation:				
Coal freight revenue	$16,175,279.94	$15,270,213.84	$905,066.10	
Merchandise freight revenue	14,011,301.78	14,864,262.21		$852,960.43
Passenger revenue	4,159,890.47	4,326,118.87		166,228.40
Mail revenue	209,072.78	217,792.69		8,719.91
Express revenue	383,528.16	373,953.30	9,604.86	
Other transportation revenue	290,232.18	239,180.57	51,051.61	
Miscellaneous revenue	280,818.91	229,925.24	50,893.67	
Total operating revenues	35,510,154.22	35,521,446.72		11,292.50
Operating expenses:				
Maintenance of way and structures	3,496,138.82	3,344,181.89	151,956.93	
Maintenance of equipment	5,987,410.64	6,186,873.82		199,463.18
Traffic expenses	778,052.95	771,146.18	7,506.77	
Transportation expenses	11,367,496.00	11,149,201.39	218,294.61	
General expenses	574,006.37	515,927.35	58,079.02	
Total operating expenses	22,203,704.78	21,967,330.63	236,374.15	
Ratio of operating expenses to operating revenues.....per cent	62.53	61.84	0.69	
Net operating revenue	$13,306,449.44	$13,554,116.09		$247,666.65
Taxes	1,122,867.39	885,908.95	$236,958.44	
Operating income	12,183,582.05	12,668,207.14		484,625.09
Other income:				
Outside operations:—				
Water lines	45,058.55	75,169.52		30,110.97
Other operations	43,469.97	80,604.06		37,134.09
Investments—				
Dividends on stocks	555,840.13	571,594.40		15,754.27
Interest on bonds	48,944.75	12,810.00	36,134.75	
Interest on real estate mortgages	17,034.12	18,113.46		1,079.34
Miscellaneous	810,670.36	856,699.51		46,029.15
Total other income	1,521,017.88	1,614,990.95		93,973.07
Total income	13,704,599.93	14,283,198.09		578,598.16
Deductions from income:				
Interest on funded debt	3,536,060.00	3,546,333.21		10,273.21
Interest on equipment trust obligations	209,067.50	119,170.00	89,897.50	
Rentals of leased lines and guaranties	2,316,473.00	2,200,473.00	116,000.00	
Miscellaneous deductions	272,425.00	323,678.64		51,253.55
Additions and betterments	1,775,264.26	2,068,589.91		293,325.65
Total deductions from income	8,109,289.85	8,258,244.76		148,954.91
Net income	5,595,310.08	6,024,953.33		429,643.25
THE LEHIGH VALLEY COAL COMPANY.				
Net income	388,606.11	111,250.45	277,355.66	
Total net income	5,983,916.19	6 136,203.78		152,287.59

From the annual report of The Delaware, Lackawanna and Western Railroad Company for the year ending December 31, 1905, signed by W. H. Truesdale, president (p. 4):

The Delaware, Lackawanna and Western Railroad Company, for the year ending December 31, 1905.

	1905.		Increase.	Decrease.	Per cent.
Earnings:					
From transportation of coal	$13,993,584.57		$762,714.08		+ 5.76
From transportation of miscellaneous freight	9,230,787.42		892,964.73		+10.71
From transportation of passengers	5,529,001.81		313,082.84		+ 6.00
From transportation of mail	194,775.94		13,193.32		+ 7.27
From transportation of express	658,9 8.08		50,215.01		+ 8.25
From transportation of milk	707,077.25		54,551.10		+ 8.36
From transportation by ferries	1,093,626.17		1,093,626.17		
From miscellaneous sources	543,302.36		68,722.28		+14.48
Total earnings		$31,951,063.60	3,249,072.53		+11.32
Expenses:					
For maintenance of way and structures	4,640,207.50		724,090.08		+18.49
For maintenance of equipment	2,871,911.09			$65,763.60	− 2.24
For conducting transportation	9,816,195.87		1,337,833.49		+16.19
For general expenses	499,660.35		42,922.04		+ 9.40
Total expenses, 53.09 per cent		17,827,974.82	2,039,082.01		+13.13
Net earnings from operation, 46.91 per cent		14,123,088.78	1,179,990.52		+ 9.12
Less taxes		1,000,085.09	106,204.19		+11.88
		13,123,003.69	1,073,786.33		+ 8.91
Add for miscellaneous income:					
Interest on investments	213,847.00		27,705.00		
Dividends on stocks	328,047.60			143,836.15	
Interest and exchange	101,642.67		62,943.51		
Coal department earnings	3,295,425.56			150,051.21	
		3,938,932.83			
Total income		17,061,966.52	870,547.48		
Less charges:					
Interest on bonds	210,698.64			3,500.36	
Rentals, leased lines	5,128,709.23		18,312.39		
Rentals, New York terminals	143,408.50		129.10		
Renewals and betterments	3,587,485.97		140,766.65		
Sundry accounts charged off	53,235.56			449,718.20	
Total charges		9,123,537.90		294,010.42	
Total net income		7,938,428.62	1,164,557.90		
Less:					
Ten per cent dividends on stock		2,620,000.00	786,000.00		
Ten per cent extra dividend paid December 16		2,620,000.00			
Balance surplus		2,698,428.62	378,557.90		

From the annual report of The Delaware, Lackawanna and Western Railroad Company for the year ending December 31, 1906, signed by W. H. Truesdale, president (p. 4):

The Delaware, Lackawanna and Western Railroad Company, for the year ending December 31, 1906.

	1906.		Increase.	Decrease.	Per cent.
Earnings:					
From transportation of coal	$12,902,851.41			$1,090,733.16	−7.80
From transportation of miscellaneous freight	10,342,423.36		$1,111,635.94		+12.04
From transportation of passengers	6,216,624.20		687,622.39		+12.44
From transportation of mail	207,473.80		12,697.86		+ 6.52
From transportation of express	691,203.16		32,295.08		+ 4.90
From transportation of milk	767,705.24		60,627.99		+ 8.57
From transportation by ferries	1,179,165.34		85,539.17		+ 7.82
From miscellaneous sources	655,433.64		112,131.28		+20.64
Total earnings		$32,962,880.15	1,011,816.55		+ 3.17
Expenses:					
For maintenance of way and structures	4,937,771.27		297,563.77		+ 6.41
For maintenance of equipment	2,909,335.19		37,424.10		+ 1.30
For conducting transportation	10,503,943.47		687,747.60		+ 7.01
For general expenses	548,392.01		48,731.65		+ 9.75
Total expenses, 56.12 per cent		18,899,441.94	1,071,467.12		+ 6.01
Net earnings from operation, 43.88 per cent		14,063,438.21		59,650.57	− .42
Less taxes		1,573,000.00	572,914.91		+57.29
		12,490,438.21		632,565.48	− 4.82
Add for miscellaneous income:					
Interest on investments	291,598.33		77,751.33		
Dividends on stocks	434,126.00		106,078.40		
Interest and exchange	118,531.24		16,888.57		
Coal department earnings	3,655,119.20		359,693.64		
		4,499,374.77			
Total income		16,989,812.98		72,153.54	
Less charges:					
Interest on bonds	209,480.03			1,218.61	
Rentals of leased lines	5,168,716.16		30,006.93		
Rentals of New York terminals	143,544.10		135.60		
Renewals and betterments	5,551,618.56		1,964,152.59		
Sundry accounts charged off	99,382.42		46,146.86		
Total charges		11,162,741.27	2,039,203.37		
Total net income		5,827,071.71		2,111,356.91	
Less:					
Ten per cent dividends on stock		2,620,000.00			
Ten per cent extra dividend, paid December 20		2,620,000.00			
Balance surplus		587,071.71		2,111,356.91	

From the annual report of The Delaware, Lackawanna and Western Railroad Company for the year ending December 31, 1907, signed by W. H. Truesdale, president (p. 4):

The Delaware, Lackawanna and Western Railroad Company, for the year ending December 31, 1907.

			Increase.	Decrease.	Per cent.
Earnings:					
From transportation of coal	$14,361,416.47		$1,458,565.06		+11.30
From transportation of miscellaneous freight	12,235,807.52		1,893,384.16		+18.31
From transportation of passengers	6,757,596.11		540,971.91		+ 8.70
From transportation of mail	202,180.09			$5,293.80	− 2.55
From transportation of express	741,800.36		50,597.20		+ 7.32
From transportation of milk	786,654.38		18,949.14		+ 2.47
From transportation by ferries	1,223,309.22		44,143.88		+ 3.74
From miscellaneous sources	955,708.68		300,275.04		+45.81
Total earnings		$37,264,472.74	4,301,592.59		+13.05
Expenses:					
For maintenance of way and structures	4,974,887.87		37,116.60		+ .75
For maintenance of equipment	3,731,081.50		821,746.31		+28.25
For conducting transportation	12,254,278.42		1,750,334.95		+16.66
For general expenses	579,491.12		31,099.11		+ 5.67
Total expenses, 57.80 per cent		21,539,738.91	2,640,296.97		+13.97
Net earnings from operation, 42.20 per cent		15,724,733.83	1,661,295.62		+11.81
Less taxes		1,349,700.00		223,300.00	−14.20
		14,375,033.83	1,884,595.62		+15.09
Add for miscellaneous income:					
Interest on investments	395,943.33		104,345.00		
Dividends on stocks	414,106.87			20,019.13	
Interest and exchange	130,184.23		11,652.99		
Coal department earnings	4,224,920.69		569,801.49		
		5,165,155.12			
Total income		19,540,188.95	2,550,375.97		
Less charges:					
Interest on bonds	141,792.08			67,687.95	
Rentals of leased lines	5,168,106.16		9,450.00		
Rentals of New York terminals	145,029.46		1,485.36		
Renewals and betterments	3,820,088.06			1,731,530.50	
Sundry charges from suspense account and other deductions	175,785.79		76,403.37		
Total charges		9,450,861.55		1,711,879.72	
Total net income		10,089,327.40	4,262,255.69		
Less:					
Ten per cent dividends on stock		2,620,000.00			
Ten per cent extra dividend paid December 16		2,620,000.00			
Balance surplus		4,849,327.40	4,262,255.69		

From same report (p. 11):

"Few of those who are so ready to criticise this, with other large property interests, know that the prices of domestic sizes of anthracite coal realized by the producers thereof during the past year are exactly the same as those fixed after the great strike of 1902. All other staple commodities which comprise the necessities of life have been advanced in price again and again until they reached the maximum of recent years in the early months of 1907, the price of anthracite coal meanwhile remaining as in 1902.

"In this may be found one of numerous sound and convincing reasons why this prime necessity of life should remain in the control of the comparatively few hands where it now is."

From the sixth annual report of the board of directors of the Erie Railroad Company to the bond and share holders, for fiscal year ending June 30, 1901, signed by E. B. Thomas, chairman of the board (p. 21):

"An opportunity having been presented to your board to secure an interest in the stock of the Lehigh Valley Railroad Company, and believing that it would promote generally a better understanding and greater harmony between the managements of the two companies, as well as ultimately return a profit upon the investment, it was deemed wise to make such purchase. The board is confident that this action will result in material advantage to the Erie Company."

From the twelfth annual report of the board of directors of the Erie Railroad Company to the bond and share holders, for fiscal year ending June 30, 1907, signed by F. D. Underwood, president (pp. 26 and 27):

Income account (entire system) for the year ending June 30, 1907.

To operating expenses and taxes:		
Railroad—		
Maintenance of way and structures	$5,087,974.89	
Maintenance of equipment	8,147,536.49	
Conducting transportation	18,107,484.94	
Traffic-department expenses	967,922.83	
General expenses	1,269,039.37	
		$33,579,958.52
Taxes		1,442,798.34
Other operations—		
Water routes	2,696,062.48	
Shipping and coal storage plants	296,040.88	
Elevators, stock yards, etc	152,178.87	
		3,144,282.23
Total operating expenses and taxes		38,167,039.09
To accrued interest on bonds (see Table 5)		9,572,627.66
To accrued rentals of leased lines (see Table 6)		1,147,501.69
To proportions due leased lines operated on a percentage of earnings		169,329.79
To accrued interest on equipment trusts		602,922.26
To accrued interest on mortgages		31,858.93
To accrued interest on construction		21,470.84
To accrued sinking funds		370,936.55
To interest and discounts		130,107.20
To net income		5,903,658.48
		56,117,452.49
Net income for the year		5,903,658.48
Expended for additions and improvements	1,642,028.99	
Dividends Nos. 12 and 13 on first preferred stock	1,915,696.00	
Dividends Nos. 5 and 6 on second preferred stock	640,000.00	
		4,197,724.99
Surplus for the year		1,705,933.49

By gross earnings:		
Railroad—		
Freight	$25,114,683.18	
Coal	13,435,409.29	
Passenger	9,458,281.67	
Mail	495,457.67	
Express	1,025,093.83	
Rents	224,978.07	
Miscellaneous	1,440,209.74	
		$51,194,113.45
Other operations—		
Water routes	2,232,094.14	
Shipping and coal-storage plants	315,614.47	
Elevators, stock yards, etc	173,005.29	
		2,720,713.90
Total gross earnings		53,914,827.35
By interest on securities		647,113.82
By income from other sources		1,555,511.32
		56,117,452.49

From the thirteenth annual report of the board of directors of the Erie Railroad Company to the bond and share holders, for the fiscal year ending June 30, 1908, signed by F. D. Underwood, president (pp. 26 and 27):

Income account (entire system) for the year ending June 30, 1908.

To operating expenses:		
Rail operations—		
Maintenance of way and structures	$5,911,414.08	
Maintenance of equipment	10,654,741.75	
Traffic expenses	1,068,846.32	
Transportation expenses	17,793,522.08	
General expenses	1,041,017.98	
		$36,469,542.21
Outside operations—		
Water routes	2,839,751.16	
Shipping and coal-storage plants	214,417.35	
Miscellaneous	453,786.72	
		3,507,955.23
Total operating expenses		39,977,497.44
To taxes		1,111,534.78
Total operating expenses and taxes		41,089,032.22
To deductions—		
Interest accrued on bonds (see Table 5)	9,662,561.00	
Interest accrued on equipment trusts	722,643.01	
Interest accrued on mortgages	38,759.57	
Interest accrued on construction	24,056.34	
Other interest	322,223.60	
Rentals accrued for lease of other roads (see Table 6)	984,753.32	
Other rents—		
Hire of equipment (balance)	333,423.29	
Joint facilities	486,976.00	
Sinking funds accrued	442,004.57	
Other deductions	275,000.00	
Total deductions		13,292,460.70
		54,381,492.92

By operating revenue:		
Rail operations—		
Merchandise	$20,009,170.58	
Coal	13,937,170.09	
Passenger	9,489,448.73	
Mail	466,582.59	
Express	1,140,376.72	
Milk	834,188.86	
Miscellaneous	869,498.33	
		$46,746,435.90
Outside operations—		
Water routes	2,221,949.75	
Shipping and coal storage plants	355,204.83	
Miscelleaneous	684,012.42	
		3,261,167.00
Gross operating revenue		50,007,602.90
By other income:		
Dividends declared on stocks owned or controlled	211,636.50	
Interest accrued on bonds owned or controlled	450,403.33	
Interest on other securities	2,250.00	
Rents accrued from lease of road	15,000.00	
Other rents, joint facilities	512,363.55	
Separately operated properties, profit	49,463.49	
Income from all other sources	1,509,350.59	
Total other income		2,750,467.46
By net corporate loss		1,623,422.56
		54,381,492.92
Net loss for the year		1,623,422.56
Additions and betterments charged to income		575,803.64
Balance for year transferred to debit of profit and loss		2,199,226.20

It is agreed that if Mr. E. E. Loomis, first vice-president of the Delaware, Lackawanna and Western Railroad Company, were called as a witness he would make the statements hereinunder, and that such statements shall be treated as though made by him under oath, counsel, however, reserving the right to object to the irrelevancy or immateriality or incompetency as to substance of the matter contained therein.

Q. Has not a considerable portion of the coal purchased by the Delaware, Lackawanna and Western Railroad Company on the price basis provided in the 65 per cent contracts always been shipped to New York Harbor from month to month and sold there?—A. Yes, sir.

Q. Are not Ruley's general average New York Harbor f. o. b. prices used by the Delaware, Lackawanna and Western Railroad Company as the basis for settling for coal which it purchases on the price basis provided in the 65 per cent contracts?—A. Yes.

Q. What per cent dividends on its capital stock has the Delaware, Lackawanna and Western Railroad Company paid in each of the

last three or four years?—A. Quarterly dividends 2½ per cent; annual dividend 10 per cent; making a total of 20 per cent annually.

Q. Does the Delaware, Lackawanna and Western Railroad Company own stock in any corporation possessing anthracite coal lands or engaged in producing or dealing in anthracite coal?—A. It owns the capital stock of two coal companies, but one of them owns no coal lands and the other owns but 1.74 acres, and neither company produces any coal.

Q. How much of the capital stock of the Lehigh Valley Railroad Company is owned at the present time, directly or indirectly, by the Delaware, Lackawanna and Western Railroad Company?—A. Thirty-seven thousand shares.

Q. When were those shares acquired, and from whom?—A. They were acquired from J. P. Morgan & Co., 32,000 shares on March 2, 1901, and 5,000 shares on December 3, 1903.

Q. How were they paid for?—A. In cash.

Q. The 32,000 shares and the 5,000 shares have been owned continuously since the dates of their acquisition, have they not?—A. Yes.

Q. Are these 37,000 shares of the Lehigh Valley Railroad Company all that the Delaware, Lackawanna and Western Railroad Company has owned in that company since 1900?—A. Yes.

Q. Does the Delaware, Lackawanna and Western Railroad Company own, directly or indirectly, any capital stock in any of the other anthracite coal-carrying roads extending to tide water?—A. It does not.

Mr. McREYNOLDS. The death of Mr. Alfred Walter, formerly president of the Lehigh Valley Railroad Company and The Lehigh Valley Coal Company, has been shown heretofore by the testimony of witnesses. Mr. Walter was a witness in the proceeding before the Interstate Commerce Commission wherein William Randolph Hearst was petitioner and complainant and the Philadelphia and Reading Railway Company and others were defendants. The Government offers in evidence a properly certified copy of the petition and answers in that proceeding, and of the testimony of Mr. Walter given therein, and makes the same a part of the record as Govenrment Exhibit No. 159.

Judge MOOT. Defendants object, upon the ground that the Interstate Commerce Commission is not a court, the alleged testimony was not given in a court, or upon any of the issues presented by the pleadings in this suit, the alleged testimony was given on May 24, 1904, at a time so removed from the time of the bringing of this suit, and the taking of the testimony in this suit, as to make it irrelevant and incompetent, even were it otherwise competent herein. Furthermore, it appears from the exhibit offered that the parties are not the same, the object of the proceeding is not the same, and the issues are not the same, and the proceeding itself was not a judicial proceeding. If the substance of any part of the exhibit is competent,

then the Government should establish the same by a witness who may be cross-examined as to the statements on the basis of the issues in this suit.

Major WARREN. Representing The Temple Iron Company, I desire especially to object for the reason stated by other counsel representing other defendants, and for the further reason that this transcript of the testimony of Mr. Walter discloses the introduction of plainly incompetent and hearsay evidence, and mere rumor in many instances, and before the Interstate Commerce Commission there was no way to either restrain the witness and confine him to competent and legal testimony, or to strike out thereafter the same by appropriate legal motions, no objections could be noted such as can be noted in a court of justice, and the offer now is to introduce this transcript in extenso and in its entirety, with the hearsay, incompetent, and irrelevant testimony founded, in part at least, as to matters affecting The Temple Iron Company, upon nothing but rumor, and therefore I especially desire to note an objection to the introduction of this en masse as being in violation of the rules ordinarily and generally applicable to the introduction of the testimony of a deceased witness taken in a court of record.

Judge MOOT. I object, further, on the ground that the testimony of a deceased witness is not competent or material evidence in a suit of this character.

(Mr. Schaperkotter desired it noted that he made the same objection as noted by Judge Moot.)

The transcript offered is received in evidence and marked Government Exhibit No. 159.

Government's counsel offers in evidence and marks the same Government Exhibit No. 160, a duly certified statement of the secretary of the Interstate Commerce Commission, showing rates on anthracite coal over various lines and at sundry dates. The statement is received by the examiner and marked Government Exhibit No. 160, subject to the objections of the defendants, now noted as follows:

The defendants severally object to this exhibit upon the ground that the rate sheets themselves, or certified copies thereof, are the only competent evidence, under the statute, which provides for filing such rate sheets or tariffs with the Interstate Commerce Commission; and upon the further ground that they are highly technical in character, and no mere compilation from them, such as this exhibit purports to be, is sufficiently accurate or full in detail to furnish on this record the facts essential upon the issues as to which the filed rates or tariffs are the only competent evidence.

Counsel for the Government offer in evidence a statement marked Government Exhibit No. 161, prepared by W. W. Ruley, chief of

the bureau of anthracite coal statistics, showing the total tonnages of anthracite coal carried by the initial transporting companies in the years 1894 to 1899, inclusive.

It is agreed that if Mr. Robert W. de Forest, vice-president of The Central Railroad Company of New Jersey, were called as a witness he would testify as hereinunder stated, and that his statement may be used for all purposes as if made by him under oath, to wit:

That The Central Railroad Company of New Jersey owns 32,000 shares of the capital stock of the Lehigh Valley Railroad Company, of the par value of $50 each, and that those shares were acquired from J. P. Morgan & Co. in February, 1901, and have been held continuously by it ever since. It originally held its interest in the form of trust certificates of series A. The trust expired December 31, 1905, and it now holds stock certificate No. 145602, issued by the Lehigh Valley Railroad Company on February 27, 1906, for 32,000 shares. It owns no other stock in the Lehigh Valley Railroad Company, either directly or indirectly, nor has it sold any of its acquisitions. It owns no stock in any of the other so-called "anthracite coal-carrying railroads."

The defendant the Delaware, Lackawanna and Western Railroad Company and the defendant railroad coal companies have been requested to produce a schedule showing their circular or quoted prices for anthracite coal at New York Harbor since 1900, and the same companies, together with The Delaware and Hudson Company and the subsidiary coal companies of the Pennsylvania Railroad Company, have been requested to produce statements showing what portions of their anthracite coal acreages were acquired subsequent to January 1, 1874. These statements not being ready to produce at this time, it is agreed that as completed they will be handed to counsel for the Government, who may incorporate them in the record as government exhibits, or as parts of government exhibits previously introduced, and that their contents may be taken as proved, subject to objection as to materiality, relevancy, or competency as to substance.

Counsel for the Government offer in evidence the following contracts, marked respectively Government Exhibits Nos. 162 to 168, inclusive:

Government Exhibit No. 162 is a contract between Simpson & Watkins and The Temple Iron Company, dated February 27, 1899.

Government Exhibit No. 163 is a contract between The Temple Iron Company, Guaranty Trust Company of New York, and Reading Company, dated February 27, 1899.

Government Exhibit No. 164 is a contract between The Temple Iron Company, Guaranty Trust Company of New York, and Erie Railroad Company, dated February 27, 1899.

It is admitted by counsel for the respective railroad or railway companies named, and it is agreed that it may be taken as proved, that the Lehigh Valley Railroad Company, by its president, Alfred Walter, and its secretary, John R. Fanshawe; The Central Railroad Company of New Jersey, by its president, J. R. Maxwell, and its secretary, Samuel Knox; The Delaware, Lackawanna and Western Railroad Company, by its president, Sam. Sloan, and its secretary, Fred. F. Chambers; and The New York, Susquehanna and Western Railroad Company, by its president, E. B. Thomas, and its secretary, J. A. Middleton, each executed with The Temple Iron Company and the Guaranty Trust Company of New York a tripartite agreement bearing the same date and in the same form, words, and figures as the agreement between The Temple Iron Company, Guaranty Trust Company of New York, and Erie Railroad Company, dated February 27, 1899, and introduced in evidence as Government Exhibit No. 164, except that in said agreements the percentages of the capital stock of The Temple Iron Company purchased by, and the percentages of the bonded indebtedness (principal and interest) of The Temple Iron Company guaranteed by, the Lehigh Valley Railroad Company, the Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, and The New York, Susquehanna and Western Railroad Company, respectively, and the percentages of the deficiency, if any, in the funds of The Temple Iron Company available for interest and dividends which said companies agreed to make up, were as follows: By the Lehigh Valley Railroad Company, 22.88 per cent; by The Central Railroad Company of New Jersey, 17.12 per cent; by the Delaware, Lackawanna and Western Railroad Company, 19.52 per cent; and by The New York, Susquehanna and Western Railroad Company, 4.68 per cent.

Government Exhibit No. 165 is a contract, dated February 27, 1899, between Simpson & Watkins and the Guaranty Trust Company of New York.

Government Exhibit No. 166 is a contract dated February 27, 1899, between the Guaranty Trust Company of New York and certain syndicate subscribers.

Government Exhibit No. 167 is a contract dated April 10, 1899, between the Guaranty Trust Company of New York and the Reading Company.

Government Exhibit No. 168 is a contract dated April 10, 1899, between the Guaranty Trust Company of New York and the Erie Railroad Company of New York.

It is admitted by counsel for the respective railroad or railway companies named, and it is agreed that it may be taken as proved, that the Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, and The New York, Susquehanna and Western

Railroad Company each executed with the Guaranty Trust Company of New York an agreement bearing the same date and in the same form, words, and figures as the agreement between the Guaranty Trust Company and the Erie Railroad Company, dated April 10, 1899, and introduced in evidence as Government Exhibit No. 168, except that in said agreements the percentages of the bonded indebtedness of The Temple Iron Company referred to as having been guaranteed by and the percentages of the capital stock of The Temple Iron Company referred to as having been purchased by the Lehigh Valley Railroad Company, The Central Railroad Company of New Jersey, the Delaware, Lackawanna and Western Railroad Company, and The New York, Susquehanna and Western Railroad Company, respectively, were as follows: By the Lehigh Valley Railroad Company, 22.88 per cent; by The Central Railroad Company of New Jersey, 17.12 per cent; by the Delaware, Lackawanna and Western Railroad Company, 19.52 per cent; and by The New York, Susquehanna and Western Railroad Company, 4.68 per cent.

It is understood among counsel that the defendants may call John H. Jones as a witness, and that the Government at that time may cross-examine him as to matters in reference to which they desire to inquire. If he is not called by counsel for the defendants he may be called by the Government in rebuttal.

It is understood among counsel that the Government may in rebuttal introduce such maps of the anthracite coal region and of the lines running thereto as it may be advised.

(Adjourned until Thursday, December 17, 1908, at 10.30 o'clock a. m.)

Met pursuant to adjournment at New York, Thursday, December 17, 1908, 10.30 o'clock a. m.

Present, the Examiner and Messrs. McReynolds, Todd, Moot, and Warren.

MARTIN P. BLAUVELT, a witness for the plaintiff, having been recalled, was examined as follows:

Direct examination by Mr. TODD:

Q. You were asked to ascertain when the Hillside Coal and Iron Company acquired its stock interests in certain subsidiary anthracite coal companies, and when the Pennsylvania Coal Company acquired its interest in the capital stock of a subsidiary anthracite coal company. Have you done that?—A. I have.

Q. Please state when those dates were.—A. The Hillside Coal and Iron Company acquired the capital stock of the Butler Mine Company (Limited) in December, 1900; that of the Florence Coal Company in December, 1901; that of the Yatesville Coal Company in May, 1906, and that of the Clarence Coal Company in May, 1906, The Pennsylvania Coal Company acquired the capital stock of the Avoca Coal Company in June, 1906.

Q. The Pennsylvania Coal Company and the Hillside Coal and Iron Company acquired the entire capital stocks of the subsidiary companies which you named on those dates, or the bulk of them?—A. Yes, sir; the bulk. I think all of it. In each case I think it was the entire capital stock, or practically so.

Q. You were also asked to ascertain the amount of the anthracite coal lands held by each of those subsidiary companies. Have you done that?—A. That is being done, but the statement is not ready. It will be furnished later.

Mr. Todd. When this information is produced it will be incorporated in the record as a government exhibit, or added to appropriate exhibits already in the record.

Q. The Erie Railroad Company has, in recent years, owned some shares of the capital stock of the Lehigh Valley Railroad Company, has it not?—A. It has.

Q. How many shares has it held since 1900?—A. Thirty-seven thousand shares.

Q. When did it acquire those shares?—A. It acquired 32,000 shares in February, 1901, and 5,000 shares in December, 1903.

Q. Who did it acquire them from?—A. We purchased both lots of stock from Messrs. J. P. Morgan & Co.

Q. How was the consideration satisfied?—A. In cash.

Q. Has the Erie Railroad Company sold any of those shares of stock?—A. It has since sold them all.

Q. Did it sell them all at once?—A. During the period from January to April, 1908.

Q. Did it sell them for cash?—A. For cash.

Q. Do you know to whom it sold them?—A. They were sold through brokers. I do not know who was the actual purchaser.

Q. Excluding The New York, Susquehanna and Western Railroad Company, does the Erie Railroad Company own stock in any other of the anthracite coal carrying railroads extending to tide water?—A. It does not.

Q. Does The New York, Susquehanna and Western Railroad Company own any capital stock in any of the other anthracite coal carrying roads to tide water?—A. It does not.

Q. Do you know anything about the circumstances of the acquisition of the Lehigh Valley Railroad Company stock by the Erie Railroad Company? Was it acquired in conjunction with other roads about the same time?—A. I do not know that.

Cross-examination by Judge MOOT:

Q. Do you know whether J. P. Morgan & Co. owned this stock of the Lehigh Valley Railroad Company themselves, or whether they were simply representing clients, or others, as brokers in that transaction?—A. I do not know.

Q. They are a brokerage house, handling stock for other people? I do not mean in the ordinary sense, but they do buy and sell and hold for their customers very largely?—A. They do at times, yes. I understand so.

Q. What were the dates of these purchases by the Erie Railroad Company of that stock?—A. The 32,000 shares were purchased February 8, 1901. The 5,000 shares were purchased December 1, 1903.

Q. How much cash did those 37,000 shares of stock cost the Erie Railroad Company altogether?—A. $1,169,760.94.

Q. How much did the Erie Railroad Company sell those shares of stock for?—A. $2,087,954.39.

Q. Making a profit to the Erie Railroad Company on its investment of how much?—A. $918,193.45.

Q. A profit of nearly 100 per cent?—A. Very nearly.

Q. If J. P. Morgan & Co. owned that stock and sold it to the Erie Railroad Company, then the Erie Railroad Company made that much profit out of J. P. Morgan & Co. on the business?—A. That is apparent.

Q. Did the Erie Railroad Company get any dividends of this stock also while they had it?—A. It did; yes, sir.

Q. Are you able to tell us how much it received in dividends during the time it held it?—A. I am not.

Q. Do you know which official of the Erie Railroad Company is to be credited with that little bit of business acumen?—A. I think Mr. Thomas was president at that time. I do not know who was responsible for this transaction.

Q. Was he not chairman of the board then?—A. No; he was not chairman of the board. He was in 1901, when the 32,000 shares were purchased.

Q. But he had gone out in 1903?—A. I think so; yes, sir.

Q. I assume that the business considerations that controlled that transaction are not matters of knowledge on your part?—A. They are not.

(Adjourned to meet at the office of the United States district attorney at Philadelphia on Thursday, January 14, 1909, at 10.30 o'clock a. m.)

Met pursuant to adjournment at the office of the United States attorney, post-office building, Philadelphia, Pa., Thursday, January 14, 1909, at 10.30 a. m.

Present: The Examiner.

(By agreement, the hearing was adjourned until Friday, January 22, 1909, at 10.30 o'clock a. m.)

Met pursuant to adjournment at Philadelphia, Pa., Friday, January 22, 1909, at 10.30 a. m.

Present: The Examiner, and Messrs. McReynolds, Todd, Warren, Moot, Campbell, Wells, Schaperkotter, de Forest, Torrey, and Drayton.

The Government offers in evidence three exhibits, designated as Government Exhibits No. 169, No. 170, and No. 171.

It is agreed by counsel that these exhibits shall be treated as though proven by an accountant, who would say that he compiled them from the figures contained in the reports of the department of mines for the State of Pennsylvania for the years 1900 to 1907, inclusive, except the notations contained thereon, which are the work of counsel for the Government and which purport to have been taken from the pleadings and evidence.

It is further agreed that these exhibits are put into the record subject to correction for any mistakes which may be pointed out and subject to any other objection as to competency or materiality, other than as to the form of proof, which counsel may wish to present, and counsel for defendants also reserve the right to prove any and every fact bearing upon any of the questions touched by these exhibits as they shall hereafter determine.

Defendants shall not be bound by the notations contained on the exhibits, except as the same may be sustained by the evidence heretofore or which may hereafter be put into the record.

Government Exhibit No. 169 is a table, headed, "Production of anthracite coal in long tons of 2,240 pounds, calendar years 1900–1907, inclusive."

Government Exhibit No. 170 is headed, "Production of anthracite coal in long tons of 2,240 pounds, calendar years 1900–1907, inclusive, by those grouped as 'all other operators' in Government Exhibit No. 169."

Government Exhibit No. 171 is headed, "Production of anthracite coal in 1907—a recapitulation from Government Exhibits Nos. 169 and 170."

The Government offers in evidence eight exhibits designated as Government Exhibits No. 172, No. 173, No. 174, No. 175, No. 176, No. 177, No. 178, and No. 179.

Government Exhibits No. 172 to No. 176, inclusive, are tables furnished by that company showing the monthly circular prices f. o. b. Port Liberty of The Philadelphia and Reading Coal and Iron Company for white ash anthracite coal, Shamokin anthracite coal, Schuylkill red ash anthracite coal, Lorberry anthracite coal, and Lykens Valley anthracite coal, respectively.

Government Exhibit No. 177 is a table furnished by that company showing the monthly quoted prices f. o. b. Port Johnston of The Lehigh and Wilkes-Barre Coal Company for white ash anthracite coal.

Government Exhibit No. 178 is a table furnished by that company showing the monthly quoted prices f. o. b. Perth Amboy of The Lehigh Valley Coal Company for white ash anthracite coal.

Government Exhibit No. 179 is a table furnished by that company showing the monthly quoted prices f. o. b. Hoboken of Delaware, Lackawanna and Western Railroad Company for white ash anthracite coal.

SAMUEL T. PETERS, a witness for the plaintiff, recalled.

Direct examination by Mr. MCREYNOLDS:

Q. You are here under a subpœna duces tecum, requiring you to bring with you any and all price circulars, or other records, data, or memoranda in your possession or under your control, showing the circular or quoted prices of the Hillside Coal and Iron Company and the Pennsylvania Coal Company at New York Harbor, f. o. b., for the prepared sizes of anthracite coal for each month of the calendar years 1900–1908, both inclusive. That subpœna was regularly served upon you?—A. Yes, sir.

Q. Have you those things with you?—A. I have a copy, the same as we have produced to the officers of the Erie Railroad, but the various hearings in this case have depleted our circular book so that we haven't them. Those are exact copies and a statement similar to the one filled in on the reports furnished to the vice-president of the Hillside Coal and Iron Company and the Pennsylvania Coal Company, which we filled in a few weeks ago. I think there were five sets of circulars that we have been drawn on for. Williams & Peters issued no circulars prior to the 1st of April, 1901; but subsequent to that date they have issued practically monthly circulars. The figures given you are the circular prices for the coals of both the Hillside Coal and Iron Company and the Pennsylvania Coal Company f. o. b. at Weehawken and Edgewater, N. J.

Counsel for the Government offered in evidence the statement submitted by the witness as Government Exhibit No. 180.

By Mr. TODD:

Q. In this schedule, under the heading of April, 1906, there is written a notation "Strike." Was there no price circular that month?—A. We did not issue any price circular that month.

Q. Was a price quoted during that month?—A. Whatever coal we disposed of at that time, we disposed of it practically on the previous month's circulars.

Q. Which was what you call the regular winter schedule?—A. The full winter schedule.

Q. I note also that in the year 1902 no prices are given for the months of June, July, August, September, and October, and that under those months the notation "strike" appears. No circulars were issued during those months?—A. No circulars were issued. I presume, without going back, that the same method was adopted

there, that whatever prices were in existence prior to that time were continued.

Q. How about the month of October, 1902? What was the price in effect during that month?—A. The price in effect in the month of October, if I recall, was the same price that is in effect at the present time—about $4.75 to $5. I think it practically went to schedule at that time, to the best of my knowledge and belief.

Q. Prior to April, 1901, you said that you issued no price circulars at all?—A. None.

Q. Did you have any standard quoted pri[illegible]ior to that?—A. We had the circulars of other anthracite comp[illegible]es and we guided our course, as nearly as possible, in line with those.

Cross-examination by Mr. Moot:

Q. When did you begin to handle the coal of the Pennsylvania Coal Company?—A. March 1, 1901, if I recall correctly.

Q. Previous to that time you handled the coal of the Hillside Coal and Iron Company?—A. Yes.

Q. You say you were guided by the circulars of the other companies in handling your coal until you began to issue these monthly circulars, barring the time when there were strikes. Just what do you mean by that?—A. It had been the custom of the Pennsylvania Coal Company, as I recall, to issue circulars; and in order to keep in touch with their various customers, when we took the tonnage over we adopted that method.

Q. That is, in April, 1901?—A. April, 1901.

Q. And the Pennsylvania Coal Company, according to your best recollection, had issued monthly circulars of its coal prices for how long a period of years?—A. Twenty years, I think.

Q. That was one of the principal independent companies?—A. One of the principal independent companies.

Q. The coal of the Pennsylvania Coal Company and the coal of the Hillside Coal and Iron Company came from substantially the same section of the Wyoming Valley, and compared how in quality?—A. Practically the same.

Q. So that the coal of either would be likely to satisfy the customers of the other?—A. Precisely.

Q. When you say, in selling the Hillside Coal and Iron Company coal previous to April, 1901, you were guided by the circulars of the other companies, I wish you would make a little clearer on the record what you mean in actual practical operation by that statement.—A. We were always in receipt—I think it has been the custom of the larger companies for twenty years to issue their circulars practically monthly. We have always done more or less business with the various companies. The production of the Hillside Coal and Iron Company was not very large. We were handling not only their product, but a great deal of other product from various companies; consequently we thought we could obtain as much for the product of the Hillside Coal and Iron Company as the other companies were obtaining for theirs.

Q. In other words, when you got the monthly price circulars of your competitors and found what their asking prices were, you knew you could get no more for the same quantity of coal, and you thought that you would be able to get as much?—A. That is precisely the position.

Q. What you mean by being guided by their circulars is that that is what you undertook to do, to get as much as they were getting?—A. To get as much as they were getting for their product.

Q. You still do that, I assume?—A. Absolutely.

Q. Has that been true of your merchandising of coal during your entire business career?—A. Absolutely. Of course, it is only part of our business.

Q. Has it been as true in the bituminous coal trade as in the anthracite coal trade, that that is what you undertake to do?—A. Precisely.

Q. Your bituminous trade is as large or larger than your anthracite trade?—A. I would rather not answer that question.

Q. You can say, at least, that your bituminous trade, both East and West, is very large?—A. Precisely.

Q. And has been all these years?—A. And has been for a great many years.

Redirect examination by Mr. McREYNOLDS:

Q. What bituminous coals do you handle?—A. We handle the Pennsylvania Coal and Coke. We are very largely interested in that corporation.

Q. Where are their mines?—A. Their mines are in Pennsylvania, in Clearfield County.

Q. What has been the range of prices of those coals in the last twenty years, since you have handled them? Has it generally been up or down?—A. It has been both up and down.

Q. Is it as high now as it was twenty years ago?—A. No; I should say not.

Q. The bituminous coals that you handle from the Clearfield district, in New York Harbor and vicinity, are cheaper than they were twenty years ago?—A. I should say that they were, without any positive statement before me.

It is agreed that the following shall be made a part of the record:

Counsel for the Government have requested of the Hillside Coal and Iron Company a statement showing what portion of the lands in the anthracite coal-producing area of Pennsylvania, now owned or leased by it, were acquired subsequent to January 1, 1874. Counsel for the Hillside Coal and Iron Company state that it declines to furnish that information, and as reasons therefor allege the following: That the Hillside Coal and Iron Company has already vol-

untarily furnished a statement showing its entire acreage of coal lands, and it is willing further to furnish a statement showing the acreage so acquired from and subsequent to the enactment of the Sherman antitrust law, so-called, under which this case is brought; but it is contended that any statement of the acreage acquired after January 1, 1874, down to the time the Sherman antitrust law, so-called, took effect, is irrelevant, immaterial, and incompetent in this case.

JOHN H. JONES, a witness for the plaintiff, having been duly affirmed, was examined as follows:

Direct examination by Mr. MCREYNOLDS:

Q. Where is your home and what is your occupation?—A. My home is in this city, in Germantown. I have been, within a year and a half of this date, connected with the Philadelphia and Reading Railway Company and The Philadelphia and Reading Railroad Company for thirty-five or forty years. At present I am retired.

Q. Do you remember testifying in or about the year 1886 in a proceeding instituted by the State of Pennsylvania against certain anthracite carriers and operators?—A. Yes; I have a recollection of testifying in that case, but I have no recollection of the testimony at all. It has all gone out of my mind.

Q. When did you first become connected with The Philadelphia and Reading Railroad Company?—A. I will have to explain that. I came into the employ of The Philadelphia and Reading Railroad Company in 1872, at the time of the transfer of the property of the Catawissa Railroad to the Reading under lease.

Q. Did you continue in the employ of The Philadelphia and Reading Railroad Company, its receivers or its successor the Philadelphia and Reading Railway Company, down to within the last two years?—A. I was not absolutely directly connected with The Reading Railroad Company for a period of about four years, between 1888 and 1892.

Q. What connection have you had at any time with the bureau of anthracite coal statistics?—A. I came into connection with that bureau in 1876, when I was called here from Williamsport by Mr. Gowen, then president of The Philadelphia and Reading Railroad Company, in a clerical capacity, and I at that time resigned my position with the railroad and opened what is now the bureau of anthracite coal statistics. At that time the statistics were of a very different character from what they are to-day. The bureau of statistics has grown to be quite a useful appendix to the whole coal trade, whereas with the original inception of it it took in only the tide-water coal at New York, only the tide-water tonnage of the various large companies.

Q. You were the individual who started the bureau, were you not?—A. Yes, sir; excepting that there were statements made in

New York for about two years prior to my incumbency that were thrown into my accounts afterwards, and I carried them forward.

Q. How long did you continue with that bureau of anthracite coal statistics?—A. I think until 1892.

Q. Then who took charge of it?—A. Mr. Ruley.

Q. And he has continued in charge of it down to date?—A. Yes, sir.

Q. In 1876, as already appears from the proof, a committee consisting of Mr. Thomas Dickson and Mr. F. B. Gowen submitted a plan for the government of the anthracite coal trade to competitive points for the year 1876, which was afterwards adopted by representatives of certain coal-carrying roads. That report provided for the employment of an expert accountant as an assistant to the secretary and treasurer, to keep the tonnage accounts of the several companies and to receive, examine, and report upon the tonnage returns received from each interest. Were you appointed as that expert accountant?

(Objected to by Judge Moot on the ground that it assumes a state of facts not proved by competent or proper evidence as the basis of the question to the witness, and a state of facts incompetent under the pleadings in this case.)

A. I was.

Q. How long did you continue to act as the expert accountant?—A. The first year was 1876. This arrangement went to pieces about August of that year and I resumed my place with the Reading Railroad again. In 1877 they had a general blow-out, and one of the worst years of the anthracite coal business, and there were no accounts or anything else kept. The following year, 1878, as I recollect it, we—I say "we," the interests represented in the names you read there just now—undertook again to make some sort of an arrangement and agreement between themselves. That was in 1878. I think that in 1879 it was omitted again. In 1880, somewhere about that time, I myself secured consent from the various coal interests to establish a bureau of anthracite coal statistics that would embody all the product and separate the competitive and the local and keep it as a matter of information for those who were connected with the coal business—simply a matter of information, which bound nobody, had nothing to do with anything of that kind. They paid me my salary and I did the work. They concluded it would be a good thing. That has been going along ever since.

Q. You continued to keep this same sort of statistics until you gave it up in 1892?—A. Yes.

Q. In 1876 who paid your salary?—A. The board of control paid my salary up to the time that we quit.

Q. That was about in August, 1876?—A. Yes.

Q. After August, 1876, and up to 1880 did you continue to keep the same sort of statistics?—A. I went back and did it. I omitted it for some years, but when I came to get the whole coal statistics

under my hand, together, to establish this bureau, I went back and brought up some statistics that were not very correct.

Q. But as good as you could get from what information you had?—A. Yes.

Q. After 1880 you were paid a regular salary for keeping these statistics, furnishing the information to the parties in interest?—A. Yes, sir.

Q. Who paid that salary?—A. Each one of the companies paid me their proportion.

Q. You mean each one of the coal-carrying railroads?—A. Yes; those that were furnishing these statistics.

Q. Will you put in the record the names of those that were furnishing you statistics?—A. No; I can not do it.

Q. Give us some of them, please. Were they the same ones that had been interested in that arrangement in 1876?—A. Yes; the same ones, practically. As I remember it, there was Mr. Dickson and Mr. Hoyt and Mr. Gowen.

Q. I presume you sold out this business to Mr. Ruley?—A. You call it "sold out"—we had other things connected with it. I did sell him the business, but it was not based upon coal particularly; the coal was part of it.

Q. Were the records of the bureau which you had kept and compiled turned over to Mr. Ruley?—A. Yes, sir.

Q. So far as you know, he still keeps them?—A. So far as I know, he still keeps them.

Q. Was Mr. Ruley connected with you while you were the active head of the bureau?—A. Yes; he came to me two or three years before 1892.

Cross-examination by Judge MOOT:

Q. Did you have any connection with the government census, or Geological Survey, or anything of that kind during those years with reference to those statistics?—A. I had charge of the United States census for coal, the Eleventh Census, for the ten years prior to 1890. The census was as of 1890; that is, it was for the ten years from 1880 to 1890, but I did not get at it until 1889—I do not know but that it was a little before that when I got to work at it—and it took me two or three years to finish it, so that when it was completed it was as of 1890 for the ten previous years.

Q. Did you have any connection with the government census or Geological Survey, or any government publications or compilations of statistics, except for that census of 1890 for the ten previous years, so far as you can recall?—A. I can not remember that. I do not know that I can answer that correctly.

Q. On this other subject, if I understand you correctly, you say there was some arrangement back in 1876 under which you were brought to Philadelphia by Mr. Gowen to get together the statistics for the tide-water coal of the large companies sending coal to tide water at New York; is that correct?—A. Yes, sir.

Q. Mr. Gowen was then representing what company, in what capacity?—A. He was president of The Philadelphia and Reading Railroad Company.

Q. That arrangement, whatever it was, was some arrangement of which you got your knowledge in what way?—A. Simply by keeping the minutes and by what Mr. Gowen may have said in my hearing.

Q. You said that that went to pieces in 1877?—A. No; it went to pieces, really, in August, 1876.

Q. I understood you to say there was none in 1877?—A. I was not authorized to keep any statistics during that year.

Q. I understood you to say the coal trade's condition was very bad in 1877 and there was no arrangement in 1877 concerning it; is that correct?—A. That is correct, as far as I remember.

Q. Was your source of information at that time as to that condition the same?—A. No; I should say not. I just knew what was going on; that was all.

Q. Was it in 1878 that you said there was again some attempt to make some kind of an arrangement?—A. Yes, sir.

Q. Your source of information as to that was again the same?—A. I can hardly tell now. I have a recollection that these men had meetings, and so forth, and that they were discussing that part of the question, and then I was instructed to keep the statistics of the shipments for the year 1878.

Q. These arrangements, then, according to your recollection, were arrangements between these gentlemen verbally and not by anything signed as a written agreement?—A. That is a hard question to answer, because, as I was in position of clerk to the secretary, I read a great many things and saw a great many things that, of course, I never expected to have to tell anybody about.

Q. But what I am getting at is the foundation of the thing. You speak of it as an arrangement and I drew my inference, from your use of the word "arrangement," that it was something that they arranged between them verbally in some way.—A. It was. There were some records or memoranda made of the arrangement.

Q. This arrangement for 1876, which went to pieces in August of 1876, do you know or have you any recollection as to how long a period of time that was formed for?—A. I do not recall what provision there was in that agreement for its life. I do not remember.

Q. Can you give us any information as to whether it went to pieces prematurely in August of 1876 or whether it went to pieces by expiration?—A. No, sir; it did not. I can say to you that it went to pieces prematurely. It simply went to pieces because they did not live up to their agreement.

Q. Or arrangement?—A. Arrangement; whatever it was.

Q. And so it went to pieces?—A. It went to pieces.

Q. They could not agree among themselves about what they were to do?—A. That is it.

Q. The next one, in 1878; was that also a verbal arrangement, according to your recollection?—A. That is the point that I stumbled

on before, and that is the point I feel I can give you an answer on now. There was at one time for a short period of time—I do not remember how long; it was less than a year—an agreement to forfeit a certain amount of money for a violation of that agreement.

Q. That, I infer, was a written paper?—A. Oh, yes. That agreement was, I think, made in 1878. I am not quite sure of that.

Q. You say that was for a period of less than a year?—A. Less than a year. It was only for two or three months. It was only a short time, but the agreement was made to forfeit money for any violation of the agreement.

Q. The agreement itself provided for its own termination in a short period of time?—A. Yes; as I remember, it went the way of all the rest of them. They did not agree and quit.

Q. As you remember it, did the agreement itself provide any way that it should terminate?—A. No; I do not know that. I can not tell you that.

Q. But anyhow, the agreement, with this provision for a forfeiture, you say, was followed by dissolution?—A. My recollection is that they did dissolve in 1879. I am not very sure of that. I can not tell by the statistics, because I went back and remodeled those statistics in places.

Q. Picked them up, so to speak?—A. Picked them up and brought them into line, so that they answer now as a basis of information for anybody that wants to use them. I can not tell how long that agreement lasted. The money-forfeit part of it was only for a little while, and they discontinued that. In fact, I know several of them did not put up their deposit at all.

Q. Do you know whether any money was actually paid as a forfeit under that agreement?—A. Nobody but got it back again.

Q. That is, their deposits were paid back again?—A. Yes, sir.

Q. That is, the deposit was not used to pay a forfeit by anybody?—A. It was used once to pay a forfeit, but when they found they could not apply it universally there was so much dissension that they just refunded it to the party that had paid, and that ended the transaction.

Q. That is, as some would not contribute, the fellows that did contribute were unwilling it should be paid over for the benefit of those that did not?—A. Yes; it was simply paid back to them. It was a failure.

Q. The time of this forfeiture business and the way it worked out you would place, according to your best recollection, about when?—A. I would place it about 1878 or 1879; that is my recollection. You must take that with some allowance, however.

Q. Following that difference and dissolution they again went as you please, so to speak, as I understood you, and worked out their own business until 1880, when you got this permission to establish the bureau?—A. No; I went back to the Reading Railroad Company and was chief clerk for the chief engineer for a year or two, and then we established this bureau that I have referred to.

Q. In 1880?—A. In 1880.

Q. The statistics for the years previous to 1880 were gathered on a different basis from what they were after 1880?—A. Yes, sir.

Q. Before 1880 they were with reference to tide-water coal and large companies only?—A. Yes.

Q. After 1880 they were with reference to coal generally, and all the companies producing it?—A. Yes; that is right.

Q. Before 1880 the statistics were gotten together at the expense of the companies for whom they were gotten together, and those companies paid for getting them together?—A. That is true.

Q. After 1880 the statistics were got together by yourself, by this authority which you got from the different producers, for the benefit of all the producers?—A. Yes; each one of the companies sent me a statement every month of their tonnage, of their particular tonnage. I say "each company;" I think there was one or two of the companies that did not do it, that did not furnish me with the information, but I had a means of getting that approximately, and I filled up my records so that they would be complete—as complete as anybody could get them. It would be impossible to make them any more so. I think there were only one or two companies that did not furnish me directly with their statistics.

Q. Have you any recollection what companies they were?—A. the Pennsylvania Railroad Company was one, but their policy did not always remain that way. But they did refuse to give me any other figures excepting those which I found in the Public Ledger, which they furnished. I found how those figures were made up, and they were not complete for my purposes, so that I had to supplement them with some information I gathered from other sources.

Q. After you established that bureau in that way in 1880, were you, drawing a salary from any one of those companies yourself, while you were conducting that bureau?—A. No; I made a bargain with them on the basis of tonnage.

Q. With the different companies?—A. With the different companies, and they paid me my salary. The Philadelphia and Reading Railroad Company paid me their share, whatever it was, of the tonnage shipped.

Q. When you say they paid you your salary, you mean they paid you on the basis of the tonnage?—A. That is right. That is what I said, I think.

Q. Do you remember how many companies paid you for doing this work on the basis of their respective tonnage?—A. I think there were eight companies. It is in my reports, which have been published time and again.

Q. I will name over some of the companies. Was The Philadelphia and Reading Railroad Company one?—A. Yes.

Q. Was the Pennsylvania Railroad Company one?—A. Upon my word, I can not answer that now.

Q. The Pennsylvania Railroad Company was not one of those that paid you while they refused to furnish the figures, were they?—A. No, sir.

Q. There came a time when they did furnish the figures?—A. Yes.

Q. Do you remember whether they paid anything then?—A. Yes; they paid.

Q. After they did furnish the figures, they paid on the tonnage basis whatever you got for doing this work?—A. Yes, sir.

Q. Do you remember whether the Lehigh Valley Railroad Company or The Lehigh Valley Coal Company paid or not?—A. The Lehigh Valley Railroad Company paid me.

Q. Did the Erie Railroad Company?—A. Yes.

Q. The Delaware, Lackawanna and Western Railroad Company?—A. Yes.

Q. The Delaware and Hudson Railroad Company?—A. Yes, sir.

Q. The New York, Ontario and Western Railroad Company?—A. I can not answer that, because there was a change of name and ownership came in along there somewhere, and I do not know just how that was.

Q. I call your attention to a statement on page 689 of this volume of "Labor troubles in the anthracite regions of Pennsylvania, 1887, 1888." That statement shows, "Anthracite coal tonnage for the month of December, 1885, as compared with the same period last year. This statement includes the entire production of anthracite coal, excepting that consumed by employees, and for steam and heating purposes about the mines." I assume you mean the entire production on those railway lines?—A. Yes; and lines for which they accounted for the tonnage.

Q. So that that was not a statement of the tonnage produced by those lines, but it was a statement of the tonnage carried by those lines, which might have been produced by independent operators?—A. If you will pardon me, you are getting that a little confused there. The independent lines did not mine their coal. That did not comprise only the coal of The Philadelphia and Reading Coal and Iron Company, but it comprises coal from connecting lateral lines that were mined by other miners.

Q. Who might have been independent miners?—A. Who were independent miners.

Q. And that is true of all these roads?—A. The same principle is true of all of them.

Q. So that it was an attempt rather to get the tonnage handled by the road than to get the tonnage produced by any particular operator?—A. Undoubtedly.

Q. That statement, I see, is a statement for the Philadelphia and Reading Railroad, the Lehigh Valley Railroad, the Delaware, Lackawanna and Western Railroad, the Delaware and Hudson Canal Company, the Pennsylvania Railroad, the Pennsylvania Coal Company, and the New York, Lake Erie and Western Railroad. For those larger companies, that seems to be a statement?—A. Yes.

Q. So that that is a list of the companies for which you were then compiling these tonnages, and which, in turn, were at that time, December, 1885, paying you for your services in making this compilation on the basis of the tonnage?—A. Yes, sir.

Q. The Pennsylvania Coal Company at that time was a well-known independent operator?—A. Yes, sir.

Q. One of the leading ones?—A. One of the leading ones.

Q. And they were furnishing you with these tonnage figures, and in turn were contributing to you for furnishing them with these statistics on the basis of the tonnage figures?—A. Yes, sir.

Q. After this forfeit arrangement or agreement went to pieces, do you remember whether any other was made during the time you were gathering these statistics?—A. No, I do not remember whether any other was made during that time. My memory seems to indicate to me that I stopped making them for another year—that is, about 1877—and then what they did in 1879 I can not answer on the moment; but then I took up this matter of making a regular bureau of anthracite coal statistics, and of course that took months to accomplish, but the figures dated from 1880, I think.

Q. And then the thing went steadily forward?—A. From that time forward there were no interruptions in the agreement—there really was no agreement that I know of. There was really no agreement whatever that I know anything of from that time forward.

Q. About what did they pay you on this tonnage basis, these various companies? How was the thing gotten at practically?—A. The basis of my pay was 1 cent for every 100 tons. That was all—a simple basis, and we calculated it mighty quick after we got the information.

Q. You went on, then, on that basis until you sold out your records, or whatever you had, to Mr. Ruley in 1892; is that right?—A. Yes, sir.

Q. I assume that what you received for your records and business, and so forth, was your own personal property and belongings?—A. Undoubtedly so.

Q. You did not account to any one of these people for it in any way, shape, or form?—A. No, sir.

Q. Because when you had furnished the tonnage and they had paid you for furnishing that tonnage, that ended your relations with them and theirs with you?—A. Yes, sir; that is correct.

Q. After you organized this bureau in 1880, who determined on the form in which you would make the statements, and on whether they should be given to the public press or not, and on whether they should be furnished to other people or not, and all that?—A. The arrangement under which I had always worked was that it should not be given to anybody except the officers of the railroads who were interested; that is, the officers involved in the coal business. The figures we received from a certain officer of a company, and that officer would see that my check was duly paid.

Q. When was it, if you know, that these statements first began to be published from month to month by the public press?—A. We had a good deal of trouble about that thing, because I was constantly endeavoring to keep those figures in the channel in which they were originally intended to be kept, but somebody, somehow, would always get them into the papers. I do not know of any one thing that I had more trouble about than I did that.

Q. Do you know whether the point was ever reached during your administration when you voluntarily made public these figures for publication?—A. I will answer that in this way: There was no time when I voluntarily gave those figures to the public, but the press got them and there might have been several months in succession when I just passed it along and said nothing about it at all, and then I would try again and investigate again to try to find out who was betraying the confidence of those gentlemen, because I knew they understood that these figures were not to be given out to the public, and they often took me to task for their getting out. They were intended for the use of these gentlemen for the regulation of their tonnage, and not for the public at all; but there came a time, as I said, when we just let the matter go and did not attempt to restrict it.

Q. By regulating their tonnage, you mean that it was information by which the officers of these railroads could make their orders for cars, provide for their rolling stock, provide their motive power and crews, and all that, and tell what they had to do in a given period of time, probably, in the way of handling tonnage on their line?—A. That is substantially it.

Q. About how long did the thing run, as near as you can remember, before the giving out of these figures by somebody, in spite of you, became so common and habitual that you ceased to try to stop it, and the companies ceased to talk with you on that subject?—A. I could not give you any specified time.

Q. But there did come such a time?—A. There did come such a time, but I do not just remember when that was.

Q. There did come a time when that became so usual that you ceased to endeavor to restrict it?—A. Yes; but never did we ourselves place those statements in the hands of the press.

Q. During your period?—A. During my period.

Q. If that has been changed under Mr. Ruley, so that he gives the figures to the press, that is different from what you used to do?—A. Yes, sir.

Q. For the purpose of the government publications, census, and all that, you used these figures about how early? Did you use them at all before 1880, as far as you remember, for such purposes?—A. No.

Q. But you did from 1880 to 1890?—A. No; I did not, because I had an absolutely independent investigation for the census; that was an entirely different affair. Although some of these figures may have worked in, they were not adapted to it at all. It was on new blanks and new forms, and everything was entirely different.

Q. What you said about each company paying part of your salary, then, was really based on this 1 cent for each 100 tons?—A. At first, no; not until they all got together with this general statement of statistics did they pay on the percentage basis. Prior to that time, whenever I worked for the bureau or for the coal statistics, they paid me a salary, which was the salary that Mr. Gowen paid me when he brought me down.

Q. In other words, as nearly as you can give the date now, down to 1880 you were working on a salary fixed by Mr. Gowen, which each company contributed to, but after 1880 you had your independent bureau, from which you furnished this tonnage on this basis which you have stated, and they paid you a cent for each 100 tons?—A. I think that statement is correct.

(Question repeated.)

A. Prior to 1880 the salary I received, as I recollect now, was paid by Mr. Gowen, and when we established the bureau, then it was paid directly to me by each of the other companies. It was not paid directly to me under the original arrangement; Mr. Gowen paid it to me and charged it out to the other companies.

Q. After 1880, when you say "we" established a bureau, you mean yourself?—A. Myself, in connection with all these other people. They had to agree to it, or I would not have gotten along at all.

Q. But from 1880 you were paid no salary, but were paid on a tonnage basis, as I understand you?—A. Yes, sir.

Q. If you made more than a salary that was yours, and if you made less than a salary that was your loss?—A. Yes; that is the practical working out of it.

Q. Since 1892, as I understand you, you have had nothing to do with these statistics yourself?—A. No, sir; but I did have to do with the census.

Q. You said it took you two or three years; but I mean, so far as these companies are concerned, you had nothing to do with their statistics since 1892 except in connection with the census. Is that right?—A. Yes, sir.

Q. Your employment after 1892 was what?—A. By the Reading Railroad Company.

Q. In connection with their business?—A. In connection with their business.

Redirect examination by Mr. McREYNOLDS:

Q. You said the arrangement entered into in 1876, under which you were first employed as an accountant, you thought went to pieces about August of that year?—A. Yes.

Q. And that during the year 1877 the anthracite coal business was in a bad condition. What do you mean by being in a bad condition?—A. I mean to say it was at the height of its worst competitive conditions.

Q. While this agreement of 1876 was in effect this competitive condition was not so bad?—A. No; it was adhered to until along

in August, or a little later, when there was dissatisfaction, and they simply went home.

Q. The agreement went to pieces?—A. Yes, sir.

Q. And the parties in interest began to compete with each other?—A. That is it.

Q. During 1877 that competition was very fierce?—A. Very fierce.

Q. Was that what you meant?—A. Yes, sir.

Q. Where is this agreement of 1878 in which there was a forfeiture provision?—A. I do not know.

Q. Did you ever see that agreement?—A. I can not say that I ever did. I can not say that I did not, because I do not remember.

Q. Have you any idea where it can be found?—A. No.

Q. Where, in the natural course of things, would it probably be found?—A. I absolutely can not tell you a thing about it, and I am not trifling. I want to say that that book contained the minutes, entries, and memoranda connected with what was originally the board of control. Some of them Mr. Gowen would write off and give me to copy as his clerk. Those were all in a book and that book was in my possession, and once when I went to look for it it was gone. I had remembered loaning it to one or two of the officers of the railroad, but nobody appeared to remember that circumstance, and I absolutely never could find it. I am absolutely unable to tell you where it is, and I do not know.

Q. Do you remember about when was the last time you saw it?—A. No.

Q. When was this that you went to look for it and could not find it?—A. I do not know.

Q. About how many years ago?—A. Ten years ago, perhaps.

Q. Where was the book the last time you remember to have seen it?—A. That I can not tell you.

Q. Were you in the employ of the Reading Railroad Company the last time you saw it?—A. I was in the employ of the Reading Railroad Company.

Q. Was it in the office that you occupied while serving that company when you last saw it?—A. I can not say that.

Q. You say that this arrangement or agreement of 1878 provided for a forfeiture. What was the thing which would occasion a forfeiture?—A. The thing that would occasion a forfeiture would be a shipment by any one of the interests of a larger proportion of the tonnage than they had agreed to do.

Q. That arrangement of 1878 provided, in effect, that each one of these interests should ship, during each year, a certain percentage of the total?—A. Should ship during that year a certain percentage of the total shipment of that one year; yes.

Q. And if it exceeded its percentage, so allotted, it should pay a forfeiture?—A. Yes, sir.

Q. Do you know what that forfeiture was?—A. No.

Q. Was it so much per ton or was it a gross amount?—A. I can not tell you. I do not know. I probably knew at the time.

By Mr. Todd:

Q. Did I understand you to say that your relations with the railroads ended when you received from them a report of that tonnage and the compensation which they agreed to pay you?—A. No; we never stopped.

Q. You did not understand me. I understood you to say, in answer to a question by Mr. Moot—and if I am wrong correct me—that your relation with the railroads, so far as any particular body of tonnage was concerned, ended when that tonnage was reported to you and you received your compensation for the work you did?—A. As I understand you, yes. It is not quite clear.

Q. During a series of years, beginning in 1885 or 1886, after you got from the railroads their reports of tonnage, did you not write back to them a note or memorandum showing how much tonnage they had reported, and at the same time what their allotment was under a certain arrangement?—A. That was done by the report they got. They sent me the reports, and after I had compiled them and put them into form, the form that they understood about and was all right, then that transaction ended, of course. I did not send back to them and tell them there was this much over or that much short, or anything of the kind. I simply gave them the information which they paid me to secure, without any further interest in the matter at all.

Q. What was the information you gave them?—A. The report that I prepared every month. That is the only information I ever gave them, unless there would be some simple question about a mistake in a figure or something of that kind.

Q. You gave back to them the same figures which they gave you?—A. That is it; I used their figures to make up these totals, and the acknowledgment of receipt, if you please, was simply sending them a statement compiled from those figures. That was all.

Q. Did you return to them the figures of all the companies, or only their own?—A. I returned to them the figures of all the companies, for each one all, so that each member of this little group of coal people got his figures from me, those figures being based upon statements of tonnage which they were not willing themselves to give to somebody else.

Q. But you do not recall having shown in those reports back to the company an artificial figure which was their allotment under a certain arrangement?—A. I do not know how to answer that exactly. All these totals were made up so as to produce a sum total showing the amounts of each company.

By Judge Moot:

Q. What Mr. Todd wants to know was whether there was any "president's percentage," or any per cent figured out, or anything to show that this company carried more tons than it should for a given month.—A. There were percentages made out, that is true; but it was made out in exactly the same way as the others. It showed on the face of the statements just exactly what per cent of the total

each had to carry, and if they were over that, the figures showed it. I did not send them a communication telling them they were over or short, but the figures on the statement I gave them showed that. Perhaps that is the answer to your question.

By Mr. TODD:

Q. I was speaking of a series of years beginning about 1885 or 1886.—A. Then that is right.

Q. You do not recall putting any percentages on there except the percentages which were actually carried?—A. I can not answer that question without going back to the books.

Q. You do not recall?—A. No.

Recross-examination by Judge MOOT:

Q. Look at your statement here for December, 1885, and December, 1884, on page 689 of this volume, "Labor troubles in the anthracite regions of Pennsylvania, 1887–1888." Is that statement, according to your recollection, a correct copy of the statement as you furnished it?—A. It looks to be.

Q. Does that contain, according to your present recollection, all that your statements as you then furnished them to these companies showed?—A. Yes. I really can not tell the time when I began to put on the statement—I certainly never did to the public, but to these people themselves—to show the result of comparing them with certain figures that the presidents had.

Q. Down from 1880 to 1885, at least, according to your present recollection, these statements show what you furnished the companies?—A. Yes.

Q. You think that after 1885, at some time previous to 1892, you added to these statements a statement to the companies themselves, showing what?—A. No; I guess I must look that up. I can not tell exactly, but it may be that I never did; that I used that simply on my own record. When I come to think about it, I guess maybe I never did put that on the companies' records. I simply had that in my own office, from my own information, putting what the percentage was of each company, put that on my own averages, and it got in my mind that I had put them on those, but I think I never did put them on those statements at all. I allowed every company to make up their own figures as to percentages and so forth. I just gave them the facts exactly as they reported them to me.

Q. In other words, with this tonnage sheet before them, all any president would have to do would be to hand this over to a clerk and ask him to figure out the percentage his company was handling that month?—A. Yes, sir.

Q. And then figure out the percentage his company handled the same month a year previous?—A. Yes, sir.

Q. And he could make as many or as few deductions, in the same way, as he saw fit, either himself or through a clerk?—A. Yes, sir.

Q. Your recollection is now that you did not do that clerical work of figuring out the percentage for them?—A. Since the ques-

tion was asked me, it has come to my mind that that is the fact; that I did not put any percentages on the statements I sent out. I did make the percentage statements on my own copies in my own office, and that was in my mind when I first attempted to answer the question.

Q. May we have the examiner put into the record these statements that I have shown you on page 689, as a part of your answer, and as your best recollection of the form in which you actually made out the statements while you were administering the bureau and sending the statements to those various companies?—A. I have no objection to that.

(The statement referred to is as follows:)

123] ANTHRACITE COAL TONNAGE.

Statement of anthracite coal tonnage for month of December, 1885, compared with same period last year.

This statement includes the entire production of anthracite coal, excepting that consumed by employees, and for steam and heating purposes about the mines.

	December, 1885.		December, 1884.	Difference.	
Philadelphia and Reading R. R.	1,125,716.03	37.90	881,748.10	+243,967.13	
Lehigh Valley R. R.	629,060.12	20.99	505,270.13	+123,785.19	
Delaware, Lackawanna and Western R. R.	388,044.06	12.98	476,375.12	− 87,431.06	
Delaware and Hudson Canal Co.	318,214.09	10.62	295,174.05	+ 23,040.04	
Pennsylvania R. R.	301,347.10	10.05	242,114.19	+ 59,232.11	
Pennsylvania Coal Co.	145,842.05	4.88	131,018.11	+ 14,623.14	
New York, Lake Erie and Western R. R.	77,998.18	2.60	* 137,736.03	− 59,832.05	
Total	2,986,825.03	100.00	2,669,438.13	+327,386.10	12.26

	For year 1885.		For year 1884.	Difference.	
Philadelphia and Reading R. R.	11,680,780.06	36.94	11,163,920.01	+516,860.05	4.63
Lehigh Valley R. R.	6,107,444.14	19.31	5,935,254.10	+172,190.04	2.90
Delaware, Lackawanna and Western R. R.	4,987,834.07	15.77	5,204,361.16	−216,527.09	4.16
Delaware and Hudson Canal Co.	3,301,873.09	10.44	3,362,679.16	− 60,806.07	1.81
Pennsylvania R. R.	3,393,683.01	10.73	3,169,287.08	+224,397.18	7.08
Pennsylvania Coal Co.	1,500,685.18	4.75	1,397,945.15	+102,740.03	7.35
New York, Lake Erie and Western R. R.	651,226.01	2.06	523,546.08	+127,679.13	24.39
Total	31,623,529.16	100.00	* 30,756,995.09	+866,534.07	2.82

* Corrected statement of the tonnage of New York, Lake Erie and Western Railroad for 1884 increases the total production for that year 38,702 tons. In addition, 46,247 tons, which was included in the tonnages of other interests for 1884, is claimed as chargeable to that company.

The stock of coal on hand at tide-water shipping points December 31, 1885, was 754,545 tons; on November 30, 670,403 tons; increase, 84,142 tons. The amount on hand December 31, 1884, was 874,681 tons.

Of the total production in 1885, 16,236,470 tons, or 51.34 per cent was from the Wyoming region; 5,898,634 tons, or 18.65 per cent from Lehigh region, and 9,488,426 tons, or 30.01 per cent from Schuylkill region.

Eastern competitive tonnage, including all coal which for final consumption or in transit, reaches any point on Hudson River or the Bay of New York, or which passes out of the capes of the Delaware.

	Tons.
1885	11,956,587
1884	12,009,855

JOHN H. JONES, *Accountant.*

It is agreed by counsel that the exhibit now presented, entitled Government Exhibit No. 160, being a statement of rates on anthracite coal compiled by the Interstate Commerce Commission, shall be substituted for the exhibit under the same number presented at a former date, and that all the entries and objections affecting that exhibit as heretofore introduced, shall be deemed transferred to this day's proceedings.

The Government offers, and asks that it be made part of the record as Government Exhibit No. 181, a statement prepared by the Interstate Commerce Commission, duly certified, showing the rates on bituminous coal from sundry points to New York Harbor and other points. It has been duly certified by the secretary of the Interstate Commerce Commission.

The defendants object thereto on the ground that such a compilation from the tariffs is not competent evidence or material evidence, and that if bituminous coal tariffs are any evidence whatever against these defendants in this case, the tariffs themselves, with their explanatory notes and contents, are the best evidence and the only admissible evidence.

The Government offers as part of the record eight documents, being certified statements made up by the Interstate Commerce Commission, duly certified by its secretary, entitled Government Exhibits No. 182, No. 183, No. 184, No. 185, No. 186, No. 187, No. 188, and No. 189. These statements show the officers and directors for the years 1899 to 1908, inclusive, of the Lehigh Valley Railroad Company and of the other railroad companies.

CONCERNING READING COMPANY, PHILADELPHIA AND READING RAILWAY COMPANY, THE PHILADELPHIA AND READING COAL AND IRON COMPANY AND RELATED CORPORATIONS.

It is agreed that it may be taken as proved on behalf of the United States, subject to objections as to relevancy or materiality or competency, but not as to the form or method of proof:

1. That by virtue of an act of the general assembly of Pennsylvania, approved April 4, 1833 (P. L., 1832–33, p. 144), The Philadelphia and Reading Railroad Company was created a corporation to construct and operate a railroad: "Beginning at or near the borough of Reading, in Berks County, and terminating at some suitable point in or near the city of Philadelphia;" that by act of the general assembly of Pennsylvania, approved March 19, 1838 (P. L., 1837–38, p. 148), The Philadelphia and Reading Railroad Company was authorized to extend its railroad to Pottsville, and by an act approved April 12, 1864 (P. L., 1864, p. 396), was authorized "to make such

lateral railroads or branches leading from the main line of their said railroad to such convenient place or points in either of the counties into or through which the said main line of their road may pass as the president and directors may deem advantageous and suited to promote the convenience of the inhabitants thereof and the interests of said company;" that The Philadelphia and Reading Railroad Company neither by its charter and supplements nor by any general law was authorized expressly or otherwise to acquire coal lands or mines or to operate such mines or to vend coal, though through the special charters of certain of the merged and leased lines forming part of The Philadelphia and Reading Railroad system authority was given to some of the companies to mine, transport, and vend coal. Their holdings of coal and other lands were, however, at or after the mergers or leases, conveyed to The Philadelphia and Reading Coal and Iron Company or to other grantees.

2. That acting under the before-mentioned enactments and divers others authorizing mergers and leases, The Philadelphia and Reading Railroad Company, as owner or lessee, operated as a common carrier, until divested of its property as hereinafter stated, among other lines of railroad and branches, a system of railroads and branches penetrating certain portions of the so-called east Mahanoy district of the western middle coal field in Schuylkill County, Pennsylvania; also certain portions of the so-called west Mahanoy district of the western middle coal field in Schuylkill, Columbia, and Northumberland counties, Pennsylvania; also certain portions of the so-called Shamokin district of the western middle coal field in Northumberland County, Pennsylvania; also certain portions of the so-called east Schuylkill district, of the so-called west Schuylkill district, and of the so-called Lorberry district, of the southern coal field, all in said Schuylkill County; also certain portions of the so-called Lykens Valley district of the southern coal field in Schuylkill and Dauphin counties, Pennsylvania; and extending thence from some of the collieries located in the said portions of the said anthracite coal fields to Philadelphia and other points, with a system of branch and leased lines extending from Philadelphia and points near there across the eastern portion of the State of Pennsylvania and through New Jersey to Port Reading Junction in the last-named State, where it connected with The Port Reading Railroad Company, which owns a line of railroad about 20 miles in length extending from Port Reading Junction aforesaid to Port Reading, a point on the waters adjacent to and connected by water navigation with New York Harbor, whereby a line was formed for the carriage, besides other traffic, of anthracite coal from some of the mines in the said regions to the said port; the said portion of the said system of railroads, with some exceptions not material to be noted here being now operated by the Philadelphia and Reading Railway Company, the successor to The Philadelphia and Reading Railroad Company.

3. That Laurel Run Improvement Company was created a corporation by an act of the general assembly of Pennsylvania, approved

May 8, 1871, with power to purchase, sell, and transport coal, to mine and manufacture iron, to acquire from time to time such lands as it might deem expedient, and to subscribe for and purchase the lands or stock of any other incorporated company existing under the laws of Pennsylvania, it being also provided that it should be lawful for any railroad or mining company existing under the laws of Pennsylvania to subscribe for and purchase the stock or to purchase or guarantee the bonds of the said Laurel Run Improvement Company; that December 21, 1871, by due proceedings, the name of the company was changed to The Philadelphia and Reading Coal and Iron Company; that thereafter the said The Philadelphia and Reading Coal and Iron Company entered upon the business for which it was created and in the course thereof acquired from time to time, before 1896, anthracite coal producing lands amounting in round figures to about 83,700 acres and also the major portion of the shares of capital stock of the following companies owning anthracite coal and other lands, namely:

Preston Coal and Improvement Company,
Fulton Coal Company,
Locust Gap Improvement Company,
Tremont Coal Company,
Mammoth Vein Coal and Iron Company, and
Delaware Coal Company,

which lands and which interest in the shares of capital stock the said The Philadelphia and Reading Coal and Iron Company continued to hold until divested as hereinafter stated.

That the anthracite coal mined and purchased by The Philadelphia and Reading Coal and Iron Company was by it shipped to Philadelphia, New York Harbor, and other markets over the railroads of The Philadelphia and Reading Railroad Company and its connections; that the said The Philadelphia and Reading Railroad Company, at or soon after the organization of The Philadelphia and Reading Coal and Iron Company, acquired substantially its entire capital stock of $8,000,000, which it continued to hold either directly or subject to certain pledges and liens until divested as hereinafter stated.

4. That February 20, 1893, default having been made by The Philadelphia and Reading Railroad Company in respect of certain of its obligations secured by mortgages covering its property and also the property of The Philadelphia and Reading Coal and Iron Company, the United States circuit court for the eastern district of Pennsylvania entered an order in a certain suit in equity wherein Thomas C. Platt, a citizen of New York, was complainant, and The Philadelphia and Reading Railroad Company and The Philadelphia and Reading Coal and Iron Company and others were defendants, appointing Archibald A. McLeod, then president of The Philadelphia and Reading Railroad Company and of The Philadelphia and Reading Coal and Iron Company, Edward M. Paxson and Elisha P. Wilbur, receivers "of said corporations and of all the railroads and

canals owned, leased, or operated by the said The Philadelphia and Reading Railroad Company, and of all the real and personal property of the said The Philadelphia and Reading Coal and Iron Company and of the said The Philadelphia and Reading Railroad Company of whatever kind and description and wheresoever situated," etc.; that thereafter Joseph S. Harris, who thereafter succeeded Archibald A. McLeod in the presidency of said corporation, was appointed receiver in place of the latter, who had resigned, and later John Lowber Welsh was appointed receiver in place of Elisha P. Wilbur, who had resigned.

That September 23, 1896, pursuant to an order of said court entered in a suit to foreclose brought by The Pennsylvania Company for Insurances on Lives and Granting Annuities, trustee under the mortgage in respect of which default had been made, and under another mortgage prior in lien thereto, the property so in the hands of the said receivers, including the interest of The Philadelphia and Reading Railroad Company in substantially all the then outstanding shares of capital stock of Port Reading Railroad Company, and in the $8,000,000 capital stock of The Philadelphia and Reading Coal and Iron Company, and including also the interest of The Philadelphia and Reading Coal and Iron Company in the anthracite coal lands aforesaid and in the shares of capital stock of the aforementioned subsidiary coal companies, was sold to Charles H. Coster and Francis Lynde Stetson, who became the purchasers in accordance with a plan of reorganization adopted by the share and security holders of the said corporations and who, in all substantial particulars, carried into effect, under the direction of the committee appointed by the share and security holders, the plan of reorganization, a copy of which is appended as a part hereof; and thereafter, October 23, 1896, the sale having been confirmed by the court, deeds were executed by the receivers, by the trustee under the mortgages foreclosed, by The Philadelphia and Reading Railroad Company, and by The Philadelphia and Reading Coal and Iron Company conveying to the purchasers their respective interests in the properties so sold.

5. That November 17, 1896, pursuant to the said plan of reorganization, the said Charles H. Coster and Francis Lynde Stetson, as purchasers, organized under the acts of the general assembly of Pennsylvania of May 31, 1887, and of April 4, 1868, and the supplements thereto, a new corporation—Philadelphia and Reading Railway Company—to which they conveyed, by their deed dated November 17, 1896, the railroad properties, including leaseholds in the railroads of certain other corporations, but excepting railroad and marine equipment formerly belonging to The Philadelphia and Reading Railroad Company and purchased by the said Coster and Stetson at the foreclosure sale aforesaid, and thereafter the said Philadelphia and Reading Railway Company, in consideration of the said conveyances, issued its bonds for $20,000,000, secured by a mortgage of the property conveyed to it subject to certain prior liens of large amount,

and certificates representing its capital stock in the amount of $20,000,000; and thereafter, December 1, 1896, on the order of the court, the receivers, who had remained in possession until then, surrendered control and possession of the said railroad properties to Philadelphia and Reading Railway Company, which has operated them continuously since that date, the same embracing among other lines of railroad and branches a system of railroads and branches penetrating certain portions of the so-called east Mahanoy district of the western middle coal field in Schuylkill County, Pennsylvania; also certain portions of the so-called west Mahanoy district of the western middle coal field in Schuylkill, Columbia, and Northumberland counties, Pennsylvania; also certain portions of the so-called Shamokin district of the western middle coal field in Northumberland County, Pennsylvania; also certain portions of the so-called east Schuylkill district, of the so-called west Schuylkill district, and of the so-called Lorberry district, of the southern coal field, all in said Schuylkill County; also certain portions of the so-called Lykens Valley district of the southern coal field in Schuylkill and Dauphin counties, Pennsylvania, and extending thence from some of the collieries located in the said portions of the said anthracite coal fields to Philadelphia and other points, with a system of branch and leased lines extending from Philadelphia and points near there across the eastern portion of the State of Pennsylvania and through New Jersey to Port Reading Junction in the last-named State, where before and since the acquisition of said railroads and leasehold interests by Philadelphia and Reading Railway Company, the said railroad lines have connected and formed, by means of traffic agreements and arrangements with Port Reading Railroad Company, which owns a line of railroad about 20 miles in length, extending from Port Reading Junction aforesaid to Port Reading, a point on the waters adjacent to and connected by water navigation with New York Harbor, a line over which, besides other traffic, anthracite coal moves from some of the mines in the said regions to the said port.

That the Port Reading Railroad Company is a corporation having the same corporate officers as the Philadelphia and Reading Railway Company; that substantially all the shares of capital stock of Port Reading Railroad Company are owned, subject to certain liens and pledges, by Reading Company, which also owns, subject to certain liens and pledges, substantially all the shares of capital stock of Philadelphia and Reading Railway Company. That by means of the traffic arrangements above mentioned there has been established, and is now maintained, a through route by which anthracite coal moves and is moved, from some of the mines from portions of the territory above mentioned, to New York Harbor.

6. That pursuant to the said plan of reorganization, the said Charles H. Coster and Francis Lynde Stetson, by their deed dated November 18, 1896, reconveyed to the said The Philadelphia and Reading Coal and Iron Company the coal lands, mines, shares of

the aforementioned subsidiary coal companies and other property formerly belonging to it and by them acquired at the foreclosure sale aforesaid; whereupon The Philadelphia and Reading Coal and Iron Company became a joint obligor in the bonds issued by Reading Company, hereinafter referred to; and thereafter, December 1, 1896, on the order of the court, the receivers, who had remained in possession until then, surrendered control and possession of the said properties to the said The Philadelphia and Reading Coal and Iron Company, and it has continuously operated them since that date, shipping the coal mined and purchased by it over the railroads of the Philadelphia and Reading Railway Company and its connections in intrastate and interstate commerce.

7. Excelsior Enterprise Company was created a corporation by a special act of the general assembly of Pennsylvania, approved May 24, 1871, a duly certified copy of which said act and of other acts of the general assembly imported into the said act by reference, are appended as a part hereof. The corporate name of Excelsior Enterprise Company was changed to National Company January 17, 1873; substantially all of the capital stock of the National Company prior to the proceedings hereinafter mentioned had long been held by or on behalf of The Philadelphia and Reading Railroad Company; the interest of The Philadelphia and Reading Railroad Company in the shares of The National Company was acquired, with other assets and property of the railroad company, by the purchasers at the foreclosure sale aforesaid; in further pursuance of the said plan of reorganization, November 6, 1896, the authorized capital stock of the said National Company was increased from $50,000 to $40,000,000, and December 7, 1896, the name of the company was changed to Reading Company, and December 18, 1896, the authorized capital stock of the company was further increased to $140,000,000, divided into $28,000,000 of first preferred, $42,000,000 of second preferred, and $70,000,000 of common stock, there having been paid into the treasury of the State of Pennsylvania on account of said various increases, a tax in all amounting to about $349,750.

8. That thereafter, December 23, 1896, in consummation of the said plan of reorganization, the said Charles H. Coster and Francis Lynde Stetson, the purchasers at the foreclosure sale in respect of the certain properties and premises so sold and conveyed to them and the said J. P. Morgan & Co., managers of the said plan of reorganization, in respect of certain other properties and assets which came into their hands pursuant to the said plan, joined in a conveyance to the said Reading Company, conveying, transferring, and assigning all the real estate formerly of The Philadelphia and Reading Railroad Company, excepting rights of way, depots, yards, and other real estate appurtenant to the railroads of the said company, all locomotives, tenders, passenger cars, baggage cars, freight cars, coal cars, and all other rolling stock, and all steam colliers, vessels, canal boats, and barges formerly of The Philadelphia and Reading Railroad Company and the other properties mentioned and described in the said instrument; the

entire capital stocks of Philadelphia and Reading Railway Company, The Philadelphia and Reading Coal and Iron Company, and The Port Reading Railroad Company; $20,000,000 of bonds of the Philadelphia and Reading Railway Company, and substantially all other property acquired by the purchasers at the said foreclosure sale and not by them previously conveyed as aforesaid to Philadelphia and Reading Railway Company or reconveyed to The Philadelphia and Reading Coal and Iron Company; whereupon January 5, 1897, Reading Company and The Philadelphia and Reading Coal and Iron Company as aforesaid, joint obligors, executed and delivered to the Central Trust Company of New York, as trustee, a mortgage commonly called their "general mortgage" for the property, which had been conveyed as hereinbefore described, and other properties and assets, to secure an issue of bonds limited to the amount of $135,000,000, which bonds, so far as the same were issued, together with certificates of beneficial interest in the hereinbefore described shares of capital stock of Reading Company, the said stock (excepting 2,000 shares of the common stock to qualify directors) having been deposited with J. P. Morgan, Frederic P. Olcott, and Henry N. Paul, as voting trustees, were in due time distributed by the managers of the plan of reorganization to the persons entitled thereto under the provisions of the said plan.

9. Reading Company has continued to own and now owns, subject to certain liens and pledges, substantially all the shares of the capital stock of the Philadelphia and Reading Railway Company and of The Philadelphia and Reading Coal and Iron Company. It has received—as it has the right to receive until the happening of the contingencies mentioned and provided for in the said general mortgage—all dividends which have been provided and declared upon the said shares, and has directed, as it has the right to direct until the happening of the said or like contingencies, the voting thereof at all shareholders' meetings during the period from December 1, 1896, until now; the president of Reading Company, for the time being, has been president of Reading Company, Philadelphia and Reading Railway Company, and also of The Philadelphia and Reading Coal and Iron Company.

10. The beforementioned and any other public or private laws of Pennsylvania or of other States affecting Reading Company, Philadelphia and Reading Railway Company, or The Philadelphia and Reading Coal and Iron Company, may at the hearing be referred to and read from with the same force and effect as if introduced in evidence in their entirety; and the orders and decrees of the circuit court of the United States in the suits above mentioned and the proceedings thereunder, as well as the instruments executed pursuant thereto, may at the hearing be referred to and read from with like effect as if introduced in evidence in their entirety.

11. August 10, 1904, Reading Company acquired, and has continually held ever since, 20,000 shares of the capital stock of the Lehigh Valley Railroad Company.

12. That The Philadelphia and Reading Coal and Iron Company has made contracts for the purchase of anthracite coal, containing provisions with respect to the prices to be paid, the length of the term of the contracts, the preparation and inspection of the coal purchased, and in other particulars, substantially similar in form to the form of contract annexed to the Government's petition herein, marked Exhibit "A," with the following:

St. Clair Coal Company,
Enterprise Coal Company,
E. White Company,
Pine Hill Coal Company,
Buck Run Coal Company.

St. Clair Coal Company operates a colliery and a washery called "St. Clair," connecting with the tracks of the Philadelphia and Reading Railway Company near a station called "St. Clair." Its contract is dated July 12, 1901, and superseded a preexisting contract dated June 1, 1896.

Enterprise Coal Company operates a colliery called "Enterprise," connecting with the tracks of the Philadelphia and Reading Railway Company near a station called "Excelsior." Its contract is dated July 17, 1901, and superseded a preexisting contract dated January 10, 1898.

E. White Company operates a colliery called "Howard," connecting with tracks of the Philadelphia and Reading Railway Company near a station called "Pottsville." Its contract is dated October 15, 1901, and superseded a preexisting contract dated September 1, 1896.

Pine Hill Coal Company operates a colliery called "Pine Hill," connecting with the tracks of the Philadelphia and Reading Railway Company near a station called "Minersville." Its contract is dated August 17, 1901, and superseded a preexisting contract dated April 2, 1900.

Buck Run Coal Company operates a colliery called "Buck Run," connecting with the tracks of the Philadelphia and Reading Railway Company at a station called "Thomaston," which colliery was opened for operation in March, 1902. Its contract is dated March 12, 1902.

REORGANIZATION OF THE PHILADELPHIA AND READING RAILROAD COMPANY AND PHILADELPHIA AND READING COAL AND IRON COMPANY.

As security holders are doubtless aware, the undersigned committee has for over a year past devoted its time and attention to the affairs of the above-named companies, and as a result a decree for the foreclosure of the general mortgage is expected shortly to be entered.

The committee feels, therefore, that the time is now opportune to bring about a reorganization of the properties of The Philadelphia and Reading Railroad Company and The Philadelphia and Reading

Coal and Iron Company on the basis which it originally undertook to accomplish, being one which shall attain the following results:

(*a*) The protection of the present general mortgage.

(*b*) The reduction of the fixed charges to a limit safely within the net earning capacity of the reorganized properties.

(*c*) Adequate provision of cash working capital for future requirements.

(*d*) The payment of the floating debt, and provision for the existing car trust obligations.

(*e*) Such control of the reorganized system until the earnings of the properties shall have placed them in a satisfactory financial position, as shall render additionally secure the new general mortgage.

Having these objects in view, the annexed plan has been prepared with the cooperation of Messrs. J. P. Morgan & Co., who have been selected by the committee to act as managers to carry out the plan.

FREDERIC P. OLCOTT,
ADRIAN ISELIN, JR.,
J. KENNEDY TOD,
HENRY BUDGE,
THOMAS DENNY,
GEORGE H. EARLE, JR.,
SIDNEY F. TYLER,
SAMUEL R. SHIPLEY,
RICHARD Y. COOK,
Committee.

PRELIMINARY CONDITIONS OF PARTICIPATION UNDER THE PLAN.

Participation under the plan of reorganization, in any respect whatsoever, by any stockholder or bondholder affected thereby (as specified on p. 7), is dependent on his depositing his holdings with one of the depositaries, Messrs. J. P. Morgan & Co., 23 Wall street, New York; Messrs. Drexel & Co., Fifth and Chestnut streets, Philadelphia, or Messrs. J. S. Morgan & Co., 22 Old Broad street, London, within such time as may be fixed, and will embrace only securities so deposited. As to income bonds and stock so deposited, participation is further dependent on the payment of assessments, as provided in the plan (see p. 8). All securities for deposit must be in negotiable form.

The assessments on income bonds and stock will be payable at the office of Messrs. J. P. Morgan & Co., Messrs. Drexel & Co., or Messrs. J. S. Morgan & Co., at the option of each depositor, in four equal installments, at least thirty days apart, when and as called for by advertisement in each instance at least twice a week for two weeks in two of the daily papers of general circulation published in the cities of New York, Philadelphia, and London, respectively. All payments must be receipted for by one of the depositaries on the reorganization certificates.

Failure to pay assessments when and as payable will subject the deposited securities and all rights on account of any prior payments to forfeiture as hereinafter provided.

The holders of receipts of the Central Trust Company of New York for general mortgage bonds deposited under the existing bondholders' agreement of May 7, 1894, shall be entitled to the benefits of this plan without the issue of new receipts or certificates, provided, that within the time limited therefor, such existing receipts be produced to one of the depositaries and stamped as assenting to this plan.

All holders of general mortgage bonds not already deposited with the Central Trust Company of New York under the existing bondholders' agreement, shall, by delivery thereof to the depositaries, be deemed to deposit their bonds under said bondholders' agreement, and, for the bonds deposited, will receive certificates of said trust company issued under that agreement, duly stamped by one of the depositaries as assenting to this plan.

The holders of receipts heretofore issued by the Central Trust Company of New York for first, second, and third preference income bonds, deferred income bonds and stock, must surrender the same to one of the depositaries and must obtain new certificates hereunder in exchange therefor, in order to entitle them to the benefit of this plan. Receipts not so exchanged will not be entitled to participation herein.

Plan of Reorganization.

THE NEW COMPANY.

Unless the managers shall decide to proceed without foreclosure or sale, the properties of the existing Reading companies will be sold and successor companies will be organized under the laws of Pennsylvania; and the stocks and securities of these successor companies will be vested in a new company, formed or to be formed under the laws of Pennsylvania or of some other State. The term "New Company," as hereinafter used, is intended to mean either the existing Reading companies or the new proprietary company.

Pending their use for reorganization purposes, all bonds deposited hereunder will be delivered by the depositaries to the Central Trust Company of New York, and all stock will be delivered in like manner to the Mercantile Trust Company, and shall be held by them respectively subject to the order and control of the committee. All stocks and bonds deposited under the plan are to be kept alive so long as necessary for the purpose of reorganization.

NEW STOCKS AND BONDS.

A.

The new company is to authorize the following securities:

(1) General mortgage 100-year 4 per cent gold bonds for $114,000,000. These bonds are to be secured by mortgage and pledge

of all properties and securities embraced in the reorganization as carried out, and also all other property which shall be acquired thereafter by use of any of the new bonds.

Of the new general mortgage bonds, $44,550,000 are to be reserved, so that they can be issued only against existing undisturbed bonds (Table C); the present improvement mortgage bonds amounting to $9,364,000, maturing in 1897, may, however, be extended at not over 4½ per cent per annum interest.

$20,000,000 of the new bonds will be reserved for purposes of future construction, equipment, etc. (available only to an extent not exceeding $1,500,000 in any one year), thus providing adequate means for extension of business.

The new mortgage will further provide for the issue, if found desirable, of additional bonds secured thereby (not exceeding $21,000,000) for the following purposes:

$8,500,000 to meet the Philadelphia and Reading terminal bonds.

$12,500,000 to meet the Philadelphia and Reading coal and iron bonds;

in which case these bonds, or the property covered thereby, will be bought under the new mortgage as additional security therefor.

Suitable arrangements will be made for a sinking fund out of the revenues from the Coal and Iron Company, or its successor, to be used to retire new general mortgage bonds, but no compulsory redemption of the new bonds can be made prior to their maturity.

The new mortgage will, subject only to the bonds for which reservation is made, be based upon properties or securities of all the lines of railroad owned by the Philadelphia and Reading Company, 327 miles.

Various leasehold lines, 552 miles, more or less.

All the property of the Coal and Iron Company, or the securities thereof, representing nearly 200,000 acres of coal and timber land.

The new mortgage will also have the benefit of equipment valued at about $10,000,000, but now subject to about $7,300,000 of car-trust obligations, which are to be acquired under the plan, and also the marine equipment of the company.

Furthermore, by the redemption of the present collateral trust mortgage, or the acquisition of the bonds secured thereby, and by the payment of other debts, the new general mortgage will have a first lien upon a majority or more of the capital stock of various companies in the system owning 448 miles of railroad, of which 195 miles are leasehold lines included in the 552 miles above stated. These 448 miles embrace properties which are essential to the system, no part of which is covered by the present general mortgage. The securities thus to be pledged earned last year an income of $585,000, of which $448,000 was actually received by The Philadelphia and Reading Railroad Company in the way of dividends, the remainder being retained for betterments and working capital.

The new mortgage will thus have the security of a vast amount of valuable property in addition to that afforded by the present general mortgage.

(2) Noncumulative 4 per cent first preferred stock for $28,000,000, subject to an increase of $21,000,000, as hereinafter stated, for substitution for second preferred stock. The first preferred stock will entitle the holders to noncumulative dividends up to 4 per cent per annum, payable out of net earnings before any dividends shall be paid on the second preferred or the common stock.

(3) Noncumulative 4 per cent second preferred stock for $42,000,000, which will entitle the holders to noncumulative dividends up to 4 per cent per annum, payable out of net earnings before any dividends shall be paid on the common stock.

(4) Common stock for $70,000,000, subject to an increase of $21,000,000, as hereinafter stated, for substitution for second preferred stock.

All the stock will be divided into shares of $50 or $100 each.

Provision will be made that at any time after dividends at the rate of 4 per cent per annum shall have been paid for two successive years on the first preferred stock, The New Company may convert the second preferred stock at par, one-half into first preferred stock and one-half into common stock.

B.

As a consideration for the property and securities to be conveyed or delivered to The New Company, or which, pursuant to this plan, The New Company shall acquire, it is contemplated that The New Company shall deliver the foregoing bonds and stock, excepting the portions to be held against such of the existing securities as are not disturbed, and such final amounts as shall be reserved for the future use of The New Company.

The requisite deliveries of the new securities to depositors and subscribers under the plan will thus be provided for.

C.

As additional protection to the new general mortgage bonds, all classes of stock of The New Company (except such number of shares as may be disposed of to qualify directors) are to be vested in the following voting trustees: J. Pierpont Morgan, Frederic P. Olcott, and a third trustee to be selected hereafter.

In the event of the death of any person designated as a voting trustee, prior to the creation of the voting trust, the vacancy shall be filled as provided in the reorganization agreement. The stock shall be held by the voting trustees and their successors, jointly (under a trust agreement prescribing their powers and duties and the method of filling vacancies), for five years, and for such further period (if any) as shall elapse before the first preferred stock shall have received 4 per cent cash dividend per annum for two consecutive years, al-

though the voting trustees may, in their discretion, deliver the stock at any earlier date. Until delivery of stock is made by the voting trustees, they shall issue certificates of beneficial interest entitling the registered holders to receive, at the time therein provided, stock certificates for the number of shares therein stated, and in the meanwhile to receive payments equal to the dividends collected by the voting trustees upon the number of shares therein stated, which shares, however, with the voting power thereon, shall be vested in the voting trustees until the stock shall become deliverable, as provided in such certificates of the voting trustees.

Provision is to be made that no additional mortgage shall be put upon the property to be acquired hereunder, nor the amount of the first preferred stock authorized under this plan be increased, except with the consent, in each instance, of the holders of a majority of the whole amount of each class of preferred stock, given at a meeting of the stockholders called for that purpose, and with the consent of the holders of a majority of such part of the common stock as shall be represented at such meeting, the holders of each class of stock voting separately; also that the amount of the second preferred stock shall not be increased except with like consent by the holders of a majority thereof, and a majority of such part of the common stock as shall be represented at the meeting. During the existence of the voting trust, the consent of holders of like amounts of the respective classes of beneficial certificates shall also be necessary for the purposes indicated.

The New Company may reserve the right to redeem at any time either or both classes of its preferred stock at par in cash, if allowed by law.

D.

These new bonds and stock trust certificates are intended to be used as shown in the accompanying tables (subject only to such changes as may be necessary for the effective carrying out of the plan), viz:

BONDS.

For undisturbed bonds (see Table C)	$44,550,000.00
For present general mortgage bonds (exclusive of about $1,900,000 pledged as collateral)	44,575,000.00
For delivery to syndicate	4,000,000.00
For new construction, additions, and betterments, additional equipment, etc., under carefully guarded restrictions, not over $1,500,000 to be used in any one year. These bonds will be used only in such manner as additionally to secure the new mortgage	20,000,000.00
For contingencies (any surplus to go to new company)	875,000.00
	114,000,000.00

FIRST PREFERRED STOCK.

For first preference income bonds	7,184,000.00
For delivery to syndicate	8,000,000.00
For reserve for adjustment with various outstanding bondholders, creditors, and stockholding interests, commission to refunding and guarantee syndicates, and contingencies (the surplus to go to The New Company)	12,816,000.00
	28,000,000.00

SECOND PREFERRED STOCK.

For first, second, and third preference income bonds	$40, 286, 000. 00
For contingencies (the surplus to go to The New Company)	1, 714, 000. 00
	42, 000, 000. 00

COMMON STOCK.

For income bonds and stock	69, 598, 000. 00
For contingencies (the surplus to go to The New Company)	402, 000. 00
	70, 000, 000. 00

The undisturbed bond issues of the Reading system can not be compulsorily retired prior to their maturity; therefore reservation of new general mortgage bonds is made to provide for them as shown above. The security for the present general mortgage bonds is ample, but a reorganization has become necessary through the creation of debts, which have proved a drain upon the resources of the company and have necessitated a diversion of its income.

DISTURBED SECURITIES AND BASIS OF EXCHANGE.

The securities disturbed in this reorganization are:

General mortgage 4 per cent bonds	$44, 602, 188
First preference incomes	23, 949, 735
Second preference incomes	16, 176, 072
Third preference incomes	16, 634, 462
Capital stock	41, 373, 662
Deferred incomes	20, 751, 590

The basis of their exchange is as follows:

	Receive:				
	Cash.	New general mortgage bonds.	First preferred stock trust certificates.	Second preferred stock trust certificates.	Common stock trust certificates.
General mortgage bonds ("stamped" receipts heretofore issued by Central Trust Company when "assented") [a] per cent	[b] 2	100			
General mortgage bonds ("unstamped" receipts heretofore issued by Central Trust Company when "assented") [a] per cent	[c] 12	100			
General mortgage bonds heretofore undeposited (when deposited in exchange for assented receipts of Central Trust Company) per cent	[c] 12	100			
First preference income bonds [d] do	On payment of assessment as stated on page 8.		30	100	
Second preference income bonds [d] do				65	65
Third preference income bonds [d] do				85	85
Stock [d] do					100
Deferred income bonds [d] do					20

[a] In order to "assent," holders of these receipts must present them for "stamping," as indicated on page 2 of plan.

[b] For January, 1896, coupon, payable on or before completion of the reorgaization, with interest from January 1, 1896.

The equitable interest certificates heretofore issued will be paid in cash at 105 per cent and interest on or before completion of the reorganization.

[c] The 12 per cent in cash represents coupons from July 1, 1893, to January 1, 1896, and is payable on or before completion of the reorganization, but bears interest at 6 per cent per annum from the dates of maturity of the respective coupons until paid. By means of this payment the "unstamped" certificates and heretofore undeposited bonds are placed upon the same footing as the "stamped" certificates.

[d] All existing receipts for these securities must be exchanged as indicated on page 2 of plan.

The foregoing percentages are based upon the principal amount of the bonds. Undeposited bonds must be deposited with all unpaid coupons.

These new bonds will be for $1,000 each. Interest will start from January 1, 1896 (first coupon to mature July 1, 1896), and will be at 4 per cent per annum. Equitable cash settlement will be made for fractional amounts of new bonds and stock accruing to depositors.

The assessment on the first, second, and third preference income bonds, on the stock, and on the deferred income bonds are:

20 per cent on first, second, and third preference incomes.

20 per cent on stock.

4 per cent on deferred incomes.

A syndicate has been formed by Messrs. J. P. Morgan & Co., J. Kennedy Tod & Co., Hallgarten & Co., and A. Iselin & Co., which definitely agrees:

1. To underwrite the payment of the assessments on the income bonds and stock of the present railroad company, the syndicate to acquire all the rights of holders of income bonds and stock who shall not deposit their stock and pay the assessments thereon.

2. To take $4,000,000 of the new general mortgage bonds and $8,000,000 of the new first preferred stock.

3. To guarantee the extension or payment of the improvement mortgage bonds and of the Coal and Iron Company bonds, most of which will mature within the next two years.

The financial requirements, not only of the reorganization, but of The New Company, as stated above, are thus fully provided for.

The compensation to Messrs. J. P. Morgan & Co. for their services as managers of the plan, and to their above-named associates in the formation of the syndicate, has been fixed at $650,000 in addition to all expenses incurred.

CASH REQUIREMENTS AND PROVISION THEREFOR.

The estimated requirements of the plan (including general mortgage interest up to January 1, 1896) are as follows:

Floating debt	$3,800,000.00	
Receivers' certificates	3,800,000.00	
Car trust and equipment notes	7,300,000.00	
Equitable interest certificates and accrued interest on unstamped general mortgage trust certificates and nondeposited general mortgage bonds, about	6,250,000.00	
Arrearages of sinking fund, divisional coal mortgages	2,000,000.00	
Reorganization and other expenses, including commissions to bankers, unforeseen items, etc. (any surplus to go to new company)	2,000,000.00	
		$25,150,000.00
The assessments will yield	20,862,280.00	
The syndicate will contribute in cash	7,300,000.00	
		28,162,280.00
Leaving an estimated cash balance of about to be used for the purposes of the new company.		3,000,000.00

POSITION OF NEW COMPANY.

The annual fixed charges of the reorganized system (see Appendix, Table B) will be about $9,300,000. An almost immediate reduction of nearly $500,000 per annum in these fixed charges will, however, be effected through the refunding or extension by the syndicate at 4 to 4½ per cent of some $20,000,000 6 per cent and 7 per cent bonds shortly to mature, and the extension already effected by the receivers, at 4 per cent, of $1,500,000 North Pennsylvania bonds which now bear 7 per cent.

The net earnings of the system for the past four years terminating November 30 were:

1892	$12,472,190.61
1893	11,172,690.56
1894	9,839,971.32
1895 (estimated as to November)	9,624,123.00

Except for the annual interest charge of about $105,000, which is now being created through the construction, in connection with the city of Philadelphia, of the Pennsylvania avenue subway in that city, and the further interest obligations which may gradually arise through the yearly issuance of not exceeding $1,500,000 of new general mortgage 4 per cent bonds for new construction, betterments, etc. (as hereafter required to develop the business), no reason is believed to exist for any increase in the fixed charges of the reorganized company.

The New Company will start without floating debt and will be relieved from the embarrassment of car trusts, which during the last five years have absorbed upwards of $4,500,000 from its net income, which otherwise might have been free to conserve the property. These car trusts, unless provided for as a part of a comprehensive plan of reorganization, will further absorb over $7,300,000 additional in the next five years. The new fixed charges will be well within the net income of the system even in the past years of extreme depression, and the New Company will start not only with a substantial working cash capital, but also with power to provide facilities for the increase of business.

[Certified copy of act creating Excelsior Enterprise Company and of proceedings changing its name to National Company.]

AN ACT To incorporate the Excelsior Enterprise Company, with power to purchase, improve, use, and dispose of property, to aid contractors and others, and for other purposes.

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met and it is hereby enacted by the authority of the same, that Charles Cook, John Clayton, Edward M'Dowall, J. M'Clogan, J. H. Graham, and Joseph Keating, their associates, successors and assigns, be and they are hereby authorized and empowered to form and be a body corpo-

rate, to be known by the name, style, and title of the Excelsior Enterprise Company, and by that name, style, and title shall have perpetual succession, and exercise and enjoy all the privileges incident to a corporation.

SEC. 2. The said corporation shall also have, enjoy and exercise the same rights, powers, privileges, franchises, and immunities as are conferred in and by an act of assembly of the Commonwealth of Pennsylvania, entitled: "An act to incorporate the Pennsylvania Company," approved the seventh day of April, anno Domini one thousand eight hundred and seventy; and also have, exercise, and enjoy the rights, privileges, franchises and immunities granted in and by any existing supplements to the charter of the said the Pennsylvania Company, as if the same were herein specially and particularly set forth.

SEC. 3. That the stockholders of the said company, by and with the advice and consent of the holders of two-thirds of the shares of stock, be and they are hereby authorized to change the name and title of the said company, and to designate the location of its general office, which changes shall be valid after filing of a certificate in the office of the secretary of the Commonwealth, signed by the president and secretary and attested by the seal of the said company.

JAMES H. WEBB,
Speaker of the House of Representatives.
WILLIAM A. WALLACE,
Speaker of the Senate.

Approved the twenty-fourth day of May, anno Domini one thousand eight hundred and seventy-one.

JNO. W. GEARY.

AN ACT To incorporate the Pennsylvania Company.

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania in general assembly met, and it is hereby enacted by the authority of the same, that Andrew Howard, J. S. Swartz, G. B. Edwards, J. D. Welsto, and J. T. Malin, their associates, successors and assigns, or a majority of them, be and they are hereby authorized to form and be a body corporate, to be known as the Pennsylvania Company, and by that name, style and title shall have perpetual succession, and all the privileges, franchises and immunities incident to a corporation, may sue and be sued, implead and be impleaded, complain and defend in all courts of law and equity, of record and otherwise, may purchase, receive, hold and enjoy, to them, their successors and assigns, all such lands, tenements, leasehold estates and hereditaments, goods and chattels, securities and estates, real, personal and mixed, of what kind and quality soever, as may be necessary to erect depots, engine houses, tracks, shops and other purposes of the said corporation, as hereafter defined by the second section of this act, and the same from time to time may sell, convey, mortgage, encumber, charge, pledge, grant, lease, sublease, alien and dispose of, and also make and have a common seal, and the

same to alter and renew at pleasure, and ordain, establish, and put in execution such by-laws, or ordinances, rules, and regulations as may be necessary or convenient for the government of the said corporation, not being contrary to the constitution and laws of this Commonwealth, and generally may do all and singular the matters and things which to them shall appertain to do for the well being of the said corporation and the management and ordering of the affairs and business of the same; provided that nothing herein contained shall be so construed as to give to the said corporation any banking privileges or franchises, or the privilege of issuing their obligations as money.

SEC. 2. That the corporation hereby created shall have power to contract with any person or persons, firms, corporations, or any other party, howsoever formed, existing, or that may hereafter exist, in any way that said parties or any of them may have authority to do, to build, construct, maintain or manage any work or works, public or private, which may tend or be designed to improve, increase, facilitate or develop trade, travel or the transportation and conveyance of freight, live stock, passengers, and any other traffic by land or water from or to any part of the United States or the Territories thereof; and the said company shall also have power and authority to supply or furnish all needful material, labor, implements, instruments, and fixtures of any and every kind whatsoever, on such terms and conditions as may be agreed upon between the parties respectively; and also to purchase, erect, construct, maintain or conduct, in its own name and for its own benefit, or otherwise, any such work, public or private, as they may by law be authorized to do (including also herein lines for telegraphic communication), and to aid, cooperate, and unite with any other company, person or firm in so doing.

SEC. 3. The company hereby created shall also have the power to make purchases and sales of or investments in the bonds and securities of other companies, and to make advances of money and of credit to other companies, and to aid in like manner contractors and manufacturers; and to receive and hold, on deposit or as collateral or otherwise, any estate or property, real or personal, including the notes, obligations, and accounts of individuals and companies, and the same to purchase, collect, adjust and settle and also to pledge, sell, and dispose thereof, on such terms as may be agreed on between them and the parties contracting with them; and also to indorse and guarantee the payment of the bonds and the performance of the obligations, of other corporations, firms, and individuals, and to assume, become responsible for, execute, and carry out any contracts, leases or subleases made by any company to or with any other company or companies, individuals or firms whatsoever.

SEC. 4. The company hereby created shall also have power to enter upon and occupy the lands of individuals or companies, on making payment therefor, or giving security according to law, for the purpose of erecting, constructing, maintaining or managing any public work, such as is provided for or mentioned in the second section of

this act, and to construct and erect such works thereon, and also such buildings, improvements, structures, roads or fixtures as may be necessary or convenient for the purposes of the said company, under the powers herein granted; and to purchase, make, use, and maintain any works or improvements connecting or intended to be connected with the works of the said company; and to merge or consolidate or unite with the said company the improvements, property, and franchises of any other company or companies on such terms and conditions as the said company may agree upon; and to fix and regulate the tolls or charges to be charged or demanded for any freight, property or passengers travelling or passing over any improvement erected, managed or owned by the said company, or on any merchandise or property transported over any road whatever by the said company, and to make, from time to time, dividends from the profits made by the said company; the several railroads managed by said company shall continue taxable as heretofore, in proportion to their length within this State respectively; and the said Pennsylvania Company shall be taxable only on the proportion of dividends on its capital stock, and upon net earnings or income, only in proportion to the amount actually carried by it within the State of Pennsylvania, and all its earnings or income derived from its business beyond the limits of this Commonwealth shall not be liable for taxation.

SEC. 5. The capital stock of said company shall consist of two thousand shares of the value of fifty dollars each, being one hundred thousand dollars, and with the privilege of increasing the same by a vote of the holders of a majority of the stock present at any annual or special meeting to such an amount as they may from time to time deem needful; and the corporators, or a majority of them, named in the first section of this act, shall have power to open books for subscriptions at such times and places as they may deem expedient; and when not less than one thousand shares shall have been subscribed, and twenty per centum thereon shall have been paid in, the shareholders may elect not less than three or more than nine directors to serve until the next annual election, or until their successors shall be duly elected and qualified; and the directors so elected may, and they are hereby, authorized and empowered to have and to exercise, in the name and in behalf of the company, all the rights and privileges which are intended to be hereby given, subject only to such liabilities as other shareholders are subject to, which liabilities are no more than for the payment to the company of the sums due or to become due on the shares held by them; and should the capital stock at any time be increased, the stockholders, at the time of such increase, shall be entitled to a pro rata share of such increase, upon the payment of the installments thereon duly called for; and whenever an increase of capital stock is made, a certificate thereof, duly executed under the corporate seal of the company, and signed by the president and secretary, shall be filed with the auditor-general before the same shall be deemed to be valid.

SEC. 6. The principal office of the said company shall be in the city of Pittsburg, but the directors, under such rules and regulations as they may prescribe, may establish branches or agencies in other parts of the State or elsewhere; all of the directors of said company shall be citizens of the United States and reside therein.

SEC. 7. The directors shall be elected annually by the stockholders on the first Tuesday of June of each year; and they shall elect from their number, at the first meeting of the board after their election, a president, and shall also have power to elect from their number, or otherwise, a vice-president, a treasurer, and secretary, and such other officers, clerks, and agents as the business of the company may require; all elections for directors shall be by ballot, and every stockholder shall be entitled to one vote for each share of stock held by him; but no person shall be eligible as director who is not a stockholder to the amount of ten shares; at the annual or special meetings a quorum shall consist of stockholders owning at least one-half of the capital stock.

SEC. 8. Ten days' notice shall be given by publication in two newspapers published in the city of Pittsburg of the time and place of the annual election; which election shall be conducted by three stockholders, one of whom shall act as judge and the other two as inspectors.

SEC. 9. The board of directors shall make all by-laws necessary for conducting the business of the company, which by-laws shall at all times be accessible to persons transacting business with them; the said directors shall have power, by a vote of a majority of their number, at any meeting of the board, to change the name of the said corporation; and by any new name, thus adopted, upon filing with the secretary of the Commonwealth and the auditor-general a truly certified certificate, the said company shall have, hold, and enjoy all the rights, powers, privileges, and immunities hereby granted; the directors shall have power to require payment of the amount remaining unpaid on the stock of said company, at such times and in such proportions as they shall think proper, the said assessment to be made as the by-laws of said company shall direct.

ELISHA W. DAVIS,
Speaker of the House of Representatives, pro tem.

CHARLES H. STINSON,
Speaker of the Senate.

Approved the seventh day of April, anno Domini one thousand eight hundred and seventy.

JNO. W. GEARY.

AN ACT Supplementary to an act entitled: "An act to incorporate the Pennsylvania Company," approved the seventh day of April, anno Domini one thousand eight hundred and seventy, authorizing the issue of common or preferred stock, and authorizing the sale or disposal thereof by the company.

SECTION 1. Be it enacted by the senate and house of representatives of the Commonwealth of Pennsylvania, in general assembly met, and

it is hereby enacted by the authority of the same, that the capital stock of said company, as authorized by said act, or the stock thereof, when increased in the mode and manner prescribed therein, may be in the whole common, or in part preferred stock, as the said company may from time to time determine and the said company are hereby authorized and empowered to issue said stock, or any portion thereof, in payment of any debt or liability incurred in the purchase of any property, or they may sell or dispose of any portion of said common or preferred stock on such terms and conditions as the company may agree upon with any party or parties, company or companies, or in the doing of any other act authorized by the provisions of the act to which this is a supplement.

JAMES H. WEBB,
Speaker of the House of Representatives.
WILLIAM A. WALLACE,
Speaker of the Senate.

Approved the eighteenth day of February, anno Domini one thousand eight hundred and seventy-one.

JNO. W. GEARY.

The undersigned being the owners and holders of more than two-thirds of the shares of the stock of the Excelsior Enterprise Company, a corporation created by the act of the legislature of the Commonwealth of Pennsylvania, approved the 24th day of May, 1871, entitled, "An act to incorporate the Excelsior Enterprise Company, with power to purchase, improve, use, and dispose of property, to aid contractors and others, and for other purposes," do hereby consent to ratify and confirm the resolution of the board of directors of said company of this date, changing the name of said company to the name "The National Company," to wit:

Resolved, that it is expedient and desirable that the name of this company be changed to the name "The National Company," and that it is hereby changed from the name Excelsior Enterprise Company to the name "The National Company," and that the general office of the company be and is in the city of Philadelphia, Pennsylvania, which changes shall be valid after the filing of a certificate to that effect in the office of the secretary of the Commonwealth, signed by the president and secretary and attested by the seal of the said Excelsior Enterprise Company, and the said president and secretary are hereby directed to sign said certificate, affix said seal thereto, and file the same in the said office of the secretary of the Commonwealth." And we the said stockholders do hereby change the name of said company from the name Excelsior Enterprise Company to the name "The National Company," and declare the general office of said company to be in the city of Philadelphia, Pennsylvania.

PHILADELPHIA, *January 18th, 1873.*

	Shares.
Charles S. Clark	200
A. C. Maury	200
Wm. Rudolph Smith	200
A. S. Cadwallader	50
Wm. Bell	50
H. M. Hamilton	10
Frank D. Lewis	200
Jacob Riegel	50
Robt. R. Corson	30
John P. Verree	10

We, the undersigned, Algernon S. Cadwallader, president, and Charles S. Clark, secretary, of the Excelsior Enterprise Company, do hereby certify that the above and foregoing instrument of writing, changing the name and title of the company from that of the Excelsior Enterprise Company to that of The National Company and designating the city of Philadelphia as the location of its general office, was this day signed and executed by Charles S. Clark, A. C. Maury, Wm. R. Smith, A. S. Cadwallader, William Bell, H. M. Hamilton, F. D. Lewis, Jacob Riegel, Robt. R. Corson, jr., John P. Verree, who are all stockholders of said company.

In witness whereof, this certificate is signed by the president and secretary, and attested by the seal of said company.

ALGERNON S. CADWALLADER,
President of the Excelsior Enterprise Company.

[SEAL.]

CHARLES S. CLARK,
Secretary of the Excelsior Enterprise Company.

Filed in the office of the secretary of the Commonwealth at Harrisburg, on Monday, the thirty-first day of March, A. D. 1873.

M. S. QUAY,
Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Harrisburg, January 17, 1908.

Pennsylvania, ss:

I do hereby certify that the foregoing and annexed is a full, true, and correct copy of an act of the general assembly of the Commonwealth of Pennsylvania entitled "An act to incorporate the Excelsior Enterprise Company, with power to purchase, improve, use, and dispose of property, to aid contractors and others, and for other purposes," approved May 24, 1871. Also full, true, and correct copy of an act of the general assembly of Pennsylvania, entitled "An act to incorporate the Pennsylvania Company," approved April 7, 1870, together with an act supplementary thereto entitled "An act supplementary to an act entitled 'An act to incorporate the Pennsylvania Company,' approved the seventh day of April, anno Domini one thousand eight hundred and seventy, authorizing the issue of common or

preferred stock, and authorizing the sale or disposal thereof by the company," approved February 18, 1871. Also full, true, and correct copy of certificate of change of name of the Excelsior Enterprise Company to the name, style, and title of The National Company, as the same appear of record and remain on file in this office.

In testimony whereof I have hereunto set my hand and caused the seal of the secretary's office to be affixed, the day and year above written.

[SEAL.] LEWIS E. BEITLER,
Deputy Secretary of the Commonwealth.

OFFICE OF THE SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA,
Harrisburg, January 17, 1908.

Pennsylvania, ss:

I, Robert McAfee, secretary of the Commonwealth of Pennsylvania, having the custody of the great seal of Pennsylvania, do hereby certify that the attestation or certificate hereunto attached is in due form and made by the proper officer, and that Lewis E. Beitler, whose name is subscribed thereto, was, at the time of subscribing the same, deputy secretary of the Commonwealth of Pennsylvania, duly appointed and commissioned, and full faith and credit are due and ought to be given to his official acts accordingly; that the records and proofs hereinbefore certified and exemplified are in the custody of, and are kept pursuant to the laws of this Commonwealth by, said officer, who authenticates the same.

In testimony whereof, I have hereunto set my hand and caused the great seal of the State to be affixed, the day and year above written.

[SEAL.] ROBERT MCAFEE,
Secretary of the Commonwealth.

CONCERNING THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, THE LEHIGH AND WILKES-BARRE COAL COMPANY AND RELATED CORPORATIONS.

It is agreed that it may be taken as proved on behalf of the United States, subject to objections as to relevancy or materiality or competency, but not as to the form or method of proof:

1. That The Central Railroad Company of New Jersey was incorporated by and organized under an act of the State of New Jersey entitled "An act to incorporate the Somerville and Easton Railroad Company," approved April 26, 1847, and the supplement thereto, approved February 22, 1849, whereby, *inter alia*, the corporate name of the said company was changed to "The Central Railroad Company of New Jersey."

2. That under the authority of the aforementioned enactment and others The Central Railroad Company of New Jersey, as owner or

lessee, has operated since long prior to January 1, 1901, and now operates as a common carrier, continuous lines of railroad from Wilkes-Barre and Scranton and other points in the Wyoming region, and from Tamanend and other points in the Lehigh region of the anthracite coal fields in Pennsylvania, across the States of Pennsylvania and New Jersey to Port Johnston, Elizabethport, and Jersey City, in the last-named State, on the waters of New York Harbor, intersecting at Tamanend and Silver Brook the Catawissa Railroad, one of the leased lines of the Philadelphia and Reading Railway Company.

3. That the principal railroads reaching into the anthracite coal regions leased and operated by The Central Railroad Company of New Jersey are the Lehigh and Susquehanna Railroad, the Nanticoke Railroad, the Nesquehoning Valley Railroad, and the Treskow Railroad, the locations of which are described in the lease between The Lehigh Coal and Navigation Company and The Central Railroad of New Jersey, dated March 31, 1871, which is in evidence in this case; that the Lehigh and Susquehanna Railroad, the Nanticoke Railroad, and the Nesquehoning Valley Railroad were constructed under the authority of special acts of the general assembly of Pennsylvania, to which, and any supplement thereof, it is agreed reference may be had by any party on the hearing if desired; that the Treskow Railroad Company was incorporated May 26, 1870, under an act of the general assembly of Pennsylvania entitled "An act to authorize the formation and regulation of railroad companies," approved April 4, 1868, to build the Treskow Railroad in the counties of Schuylkill, Carbon, and Luzerne, extending from a point on the branch of the Catawissa Railroad near Summit Station, in Schuylkill County, in a northerly direction to the coal mines in the northwest portion of Carbon County and to the coal mines in Luzerne and Schuylkill counties, near the villages of Audenried and Janesville; that the Wilkes-Barre and Scranton Railway Company was incorporated September 8, 1886, under an act of the general assembly of Pennsylvania entitled "An act to authorize the formation and regulation of railroad corporations," approved April 4, 1868, and the acts supplementary thereto, to build the Wilkes-Barre and Scranton Railway in Luzerne and Lackawanna counties from a point in or near the borough of Pittston in Luzerne County to a point in the city of Scranton.

The before-mentioned and any other published laws of Pennsylvania or other States affecting The Central Railroad Company of New Jersey may, upon the hearing, be referred to and read from with the same force and effect as if introduced in evidence in their entirety.

4. That The Lehigh and Wilkes-Barre Coal Company is a corporation of Pennsylvania and has made the following contracts for the purchase of anthracite coal, containing provisions with respect to the prices to be paid, the length of term of the contract, the preparation and inspection of the coal purchased, and all other particulars, sub-

stantially the same as in the form of contract annexed to the government's petition in this case marked "Exhibit A," to wit:

Name of seller.	Date of contract.	Description of premises covered, giving names of collieries or washeries.
Parrish Coal Co.....	May 1, 1901	396 acres of "Baltimore" and overlying veins, comprising Parrish colliery at Plymouth, Pa., and Buttonwood colliery near South Wilkes-Barre, Pa., said lands having been acquired from The Lehigh and Wilkes-Barre Coal Co. by lease.
Red Ash Coal Co.....	May 1, 1901	Coal lands comprising Red Ash collieries Nos. 1 and 2, and one washery, all located in Wilkes-Barre Township, Pa., a substantial part of said lands having been acquired from The Lehigh and Wilkes-Barre Coal Co. by lease.
Melville Coal Co.....	June 1, 1901	456 acres of land in Luzerne County, Pa., comprising Melville colliery, numbered 148 on Alder & Ruley's map of the anthracite coal fields, in evidence as government Exhibit No. 13, said lands having been acquired from The Lehigh and Wilkes-Barre Coal Co. by lease. The coal from these lands, as mined, is taken to the West End breaker (near Moosanaqua, Pa.) of The West End Coal Co. for preparation and shipment, the Melville Coal Co. having no breaker of its own. The West End Breaker also ships coal mined from other property not covered by this contract.

CONCERNING LEHIGH VALLEY RAILROAD COMPANY, THE LEHIGH VALLEY COAL COMPANY, AND RELATED CORPORATIONS.

It is agreed that it may be taken as proved on behalf of the United States, subject to objections as to relevancy or materiality or competency, but not as to the form or method of proof:

The Lehigh Valley Railroad Company was incorporated by the name of the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company on September 20, 1847, under a statute of the Commonwealth of Pennsylvania enacted April 21, 1846 (P. L. 1848, p. 575), entitled "An act to authorize the governor to incorporate the Delaware, Lehigh, Schuylkill and Susquehanna Railroad Company," and by a supplement to the statute aforesaid enacted January 7, 1853 (P. L. 1), the name of the company was changed to "Lehigh Valley Railroad Company."

Said statute of April 21, 1846, authorized the Lehigh Valley Railroad Company to construct and maintain a railroad in the Commonwealth of Pennsylvania by certain routes and locations therein specified, and conferred upon the Lehigh Valley Railroad Company certain powers, privileges, and franchises therein enumerated and expressed. The routes and location of said railroad and the corporate powers, privileges, and franchises of the Lehigh Valley Railroad Company were thereafter amended and extended by statutes among others of the Commonwealth of Pennsylvania, supplementary to said act of incorporation, enacted, respectively, March 20, 1849 (P. L. 203); April 18, 1855 (P. L. 253); March 8, 1856 (P. L. 96); April 16, 1857 (P. L. 209); April 3, 1866 (P. L. 419); and April 2, 1872 (P. L. 739).

On July 8, 1864, under the laws of the Commonwealth of Pennsylvania, in such case made and provided, the Beaver Meadow Railroad and Coal Company was duly consolidated with and merged into the Lehigh Valley Railroad Company.

The Beaver Meadow Railroad and Coal Company aforesaid was a corporation of the Commonwealth of Pennsylvania duly organized under and pursuant to statute of said Commonwealth enacted April 7, 1830 (P. L. 392), entitled "An act to incorporate the Beaver Meadow Railroad and Coal Company" with certain powers, privileges, and franchises therein specified for the purpose of constructing a railroad and the carrying on of the business of mining, transporting, and vending coal. The routes and location of said railroad and the powers, privileges, and franchises of said corporation were thereafter amended and extended by statutes of said Commonwealth, supplementary to said act of incorporation, enacted, respectively, April 4, 1831 (P. L. 494); January 29, 1833 (P. L. 18); April 15, 1835 (P. L. 336); December 22, 1836 (P. L. 1837, p. 5); February 18, 1848 (P. L. 62); March 20, 1849 (P. L. 185); March 15, 1853 (P. L. 186); and April 15, 1857 (P. L. 189).

On August 5, 1864, under the authority of the statutes of the Commonwealth of Pennsylvania, in such case made and provided, the Penn Haven and White Haven Railroad Company was duly consolidated with and merged into the Lehigh Valley Railroad Company.

The Penn Haven and White Haven Railroad Company aforesaid was a corporation of the Commonwealth of Pennsylvania, duly organized under a statute of said Commonwealth enacted May 4, 1857 (P. L. 1859, p. 786), entitled "An act to incorporate the Penn Haven and White Haven Railroad Company" with certain powers, privileges, and franchises therein specified for the purpose of constructing a railroad; and the routes and location of said railroad and the powers, privileges, and franchises of said corporation were thereafter extended and amended by statutes of said Commonwealth supplementary to said act of incorporation, enacted, respectively, on April 11, 1859 (P. L. 474); April 2, 1860 (P. L. 751); and February 16, 1863 (P. L. 47).

On June 20, 1866, under the authority of the statutes of the Commonwealth of Pennsylvania, in such case made and provided, the Lehigh and Mahanoy Railroad Company was duly consolidated with and merged into the Lehigh Valley Railroad Company.

The Lehigh and Mahanoy Railroad Company aforesaid was a corporation of the Commonwealth of Pennsylvania, organized on November 11, 1862, under a statute of said Commonwealth enacted April 8, 1861 (P. L. 259); and upon the organization of said corporation the franchises of the Quakake Railroad Company were transferred and conveyed to it. Said Quakake Railroad Company was a corporation of the Commonwealth of Pennsylvania, organized under a statute of said Commonwealth enacted April 25, 1857 (P. L. 324), entitled "An act to incorporate the Quakake Railroad Company," with certain powers, privileges, and franchises therein specified for the purpose of constructing a railroad; and the routes and location of said railroad were thereafter extended and amended by a statute

of said Commonwealth supplementary to said act of incorporation, enacted March 22, 1859. (P. L. 200.)

On May 25, 1868, under the authority of the statutes of the Commonwealth of Pennsylvania, in such case made and provided, the Hazleton Railroad Company was consolidated with and merged into the Lehigh Valley Railroad Company.

The Hazleton Railroad Company aforesaid was a corporation of the Commonwealth of Pennsylvania, originally incorporated under the name of the Hazleton Coal Company, under a statute of said Commonwealth enacted March 18, 1836 (P. L. 129), entitled "An act to incorporate the Hazleton Coal Company," with certain powers, privileges, and franchises therein specified, for the purpose of the mining of coal and the transacting of the usual business of companies engaged in the mining, transporting to market, and selling of coal and other products of coal mines, and constructing a railroad from any point on its lands near the headwaters of the Cranberry and Hazel creeks to intersect the Beaver Meadow Railroad. The routes and location of the said railroad and the powers, privileges, and franchises of said corporation were thereafter amended and extended by statutes of said Commonwealth, supplementary to said act of incorporation, enacted, respectively, March 8, 1839 (P. L. 49); April 5, 1849 (P. L. 403); March 18, 1851 (P. L. 190); January 12, 1856 (P. L. 2); March 19, 1863 (P. L. 170); March 9, 1865 (P. L. 299); and March 29, 1867 (P. L. 626). Pursuant to a statute of said Commonwealth enacted March 9, 1865 (P. L. 299), the name of said corporation was duly changed to the "Hazleton Railroad Company."

On June 16, 1868, under the authority of the statutes of the Commonwealth of Pennsylvania, in such case made and provided, the Lehigh Luzerne Railroad Company was duly consolidated with and merged into the Lehigh Valley Railroad Company.

The Lehigh Luzerne Railroad Company aforesaid was a corporation of the Commonwealth of Pennsylvania, duly organized under the name of Jeddo and Carbon County Railroad Company under a statute of said Commonwealth enacted March 23, 1854 (P. L. 1856, p. 605), entitled "An act to incorporate the Jeddo and Carbon County Railroad Company," with certain powers, privileges, and franchises therein specified for the purpose of constructing a railroad, and the route and location of said railroad and the powers, privileges, and franchises of said corporation were thereafter extended and amended by statutes of the Commonwealth of Pennsylvania, supplementary to said act of incorporation, enacted, respectively, March 16, 1865 (P. L. 545); February 12, 1856 (P. L. 41); and April 8, 1857 (P. L. 184); and by and pursuant to said supplementary statutes the name of said corporation was changed to "Lehigh Luzerne Railroad Company."

Under and pursuant to the statutory authority hereinbefore set forth, various lines of railway were constructed by the Lehigh Valley Railroad Company and its constituent companies aforesaid, and the

Lehigh Valley Railroad Company now owns absolutely and operates, and for many years has held in absolute ownership and operated, lines of railway in the Commonwealth of Pennsylvania, either constructed by itself or acquired from its constituent companies by virtue of the consolidations and mergers hereinbefore specified, to wit, from Phillipsburg, New Jersey, up the valleys of the Lehigh and Susquehanna to Wilkes-Barre, Pennsylvania, with various branches and divisions traversing the counties of Northampton, Lehigh, Carbon, Luzerne, Schuylkill, Columbia, and Northumberland of said Commonwealth.

The Lehigh Valley Railroad Company has also at various times acquired ownership of the entire capital stock of certain other railroad corporations which are now and long have been operated by the Lehigh Valley Railroad Company as a part of its railroad system, to wit: (1) Lehigh Valley Railroad Company of New Jersey, a corporation organized and existing under the laws of the State of New Jersey and owning a line of railway from Phillipsburg, New Jersey, to Jersey City, New Jersey, with various branches therefrom; (2) Pennsylvania and New York Canal and Railroad Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and owning a line of railway from Wilkes-Barre, Pennsylvania, up the valley of the Susquehanna to the boundary line between the State of New York and the Commonwealth of Pennsylvania, with various branches therefrom; (3) Lehigh Valley Railway Company, a corporation organized and existing under the laws of the State of New York and owning a line of railway connecting with the line of the Pennsylvania and New York Canal and Railroad Company as aforesaid at the boundary line between the State of New York and the Commonwealth of Pennsylvania and running thence to Buffalo, New York, with branches and divisions traversing all the territory of the central portion of the State of New York; (4) Montrose Railroad Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and owning a line of railway from Tunkhannock, Pennsylvania, to Montrose, Pennsylvania; (5) Schuylkill and Lehigh Valley Railroad Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and owning a line of railway from Lizard Creek Junction, Pennsylvania, to Blackwood, Pennsylvania; (6) Delaware, Susquehanna and Schuylkill Railroad Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and owning lines of railway from Drifton to Sheppton and from Oneida to Derringer, Pennsylvania; (7) Easton and Northern Railroad Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and owning lines of railway from Easton to Belfast, Pennsylvania, and Bushkill Station to Thirteenth Street Junction, Easton, Pennsylvania; (8) Loyalsock Railroad Company, a corporation or-

ganized and existing under the laws of the Commonwealth of Pennsylvania and owning lines of railway from Port Bowkley to Bernice, Pennsylvania, and branches.

The Lehigh Valley Railroad Company also leases and operates the lines of railway of (1) the Stateline and Sullivan Railroad Company, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania and owning lines of railway from Monroeton, Pennsylvania, to Bernice, Pennsylvania; and (2) the Lehigh and New York Railroad Company, a corporation organized and existing under the laws of the State of New York and owning lines of railway from the Pennsylvania state line at or near Sayre, Pennsylvania, to North Fair Haven, New York.

As a part of its system, the said Lehigh Valley Railroad Company, as owner or lessee, has operated since long prior to 1901, and now operates, as a common carrier, lines of railroad from Jersey City and Perth Amboy, in the State of New Jersey, on the waters of New York Harbor, across the States of New Jersey, Pennsylvania, and New York, to Buffalo, on Lake Erie, intersecting the Wyoming region, reaching all parts of the Lehigh region, and extending into the eastern part of the Schuylkill region, of the anthracite coal fields in the State of Pennsylvania, and traversing the counties of Northampton, Lehigh, Carbon, Luzerne, Schuylkill, Columbia, Northumberland, Wyoming, Lackawanna, Susquehanna, Sullivan, and Bradford, in said State; transporting over said railroads, among other commodities, anthracite coal from the mines to Perth Amboy on the east and Buffalo on the west, and to divers points in between.

Under the laws of the State of Pennsylvania the above-named railroad corporations of Pennsylvania have full powers to build branches.

The before-mentioned and any other published laws of Pennsylvania or other States affecting the Lehigh Valley Railroad Company may, upon the hearing, be referred to and read from with the same force and effect as if introduced in evidence in their entirety.

The Lehigh Valley Coal Company has made the following contracts for the purchase of anthracite coal, containing provisions with respect to prices to be paid, the length of term of the contracts, the preparation and inspection of the coal purchased, and all other particulars, substantially in the form of contract annexed to the Government's exhibit in this case, marked "Exhibit A," as follows:

Name of seller.	Date of contract.	Description of premises covered, giving names of collieries or washeries.
Austin Coal Co.....	Mar. 26, 1901	Product of their mines situated in Old Forge and Ransom townships, Lackawanna County, Pa., and known as Austin colliery.
Midvalley Coal Co....	June 24, 1901	Product of their mines situated on lands leased from New York and Middle Coal Field R. R. and Coal Co. et al., by lease dated July 1, 1889, and known as Midvalley No. 2 colliery. These lands are situated partly in Columbia and partly in Northumberland counties, Pa.
Lentz & Co.....	June 24, 1901	Product of their mines situated on lands covered by a certain lease from Delano Land Co. to Lentz, Lilly & Co., under date of January 1, 1884, and the extension thereof to Lentz, Lilly & Co., dated January 1, 1892, and known as Park No. 2 colliery. These lands are situated in Rush and Mahanoy townships, Schuylkill County, Pa.
A. Pardee & Co.....	July 9, 1901	Product of the mines leased from Cranberry Improvement Co., under date of January 1, 1898, and known as Cranberry and Crystal Ridge collieries.
The Rush Coal Co	May 1, 1902	Product of their mines situated in the boroughs of Luzerne, Courtdale, and Sayerville, and Township of Kingston, Luzerne County, Pa., known as Louise Colliery.
Temple Iron Co.....	Sept. 20, 1901	Product of the following mines: Mount Lookout colliery, situated in Wyoming borough and Exeter borough, Luzerne County, Pa.; Harry E. and Forty Fort collieries, situated in Sayerville borough, Forty Fort borough, and Kingston Township, Luzerne County, Pa.
The Evans Colliery Co.	Apr. 3, 1900	Coal from culm banks of Evans colliery property, in Banks Township, Carbon County, Pa., covered by lease from the Reeder estate to W. E. Smith, dated August 1, 1907.
William H. McCauley.	May 23, 1908	Product from mines known as Crescent colliery, located near Jenkins station on the Mountain cut-off of the Lehigh Valley Railroad. (The agreement provides for a charge of 50 cents per ton to McCauley for cost of preparation and transportation to Seneca breaker.)
Coxe Bros. & Co. (Incorporated).	Mar. 29, 1906	Product of their mines situated as follows: Drifton colliery, in Foster Township, Luzerne County, Pa.; Eckley colliery, in Foster Township, Luzerne County, Pa.; Beringer colliery, in Black Creek Township, Luzerne County, Pa.; Tomhicken colliery, in Sugarloaf Township, Luzerne County, Pa.; Oneida colliery, in East Union Township, Schuylkill County, Pa.; Beaver Meadow colliery, in Banks Township, Carbon County, Pa.

In addition to the foregoing there have been assigned by Coxe Brothers & Co. (Incorporated) to The Lehigh Valley Coal Company, under date of March 29, 1906, the two following-described coal purchase contracts containing provisions substantially the same as the foregoing contracts except as to length of time to run, namely:

1. Between Calvin Pardee & Co., sellers, and Coxe Brothers & Co. (Incorporated), buyers, dated January 31, 1903, and expiring July 1, 1909, for the product of Harwood colliery, Luzerne County, Pa. (The mining interest and coal lands of Calvin Pardee & Co. at Harwood, Pa., are now vested in the Harwood Coal Company.)

2. Between Pardee Brothers & Co., sellers, and Coxe Brothers & Co. (Incorporated), buyers, dated January 31 1903, and expiring July 1, 1909, for the product of Lattimer collieries at Lattimer, Luzerne County, Pa.

Concerning Erie Railroad Company, The Hillside Coal and Iron Company, and Related Corporations.

It is agreed that it may be taken as proved on behalf of the United States, subject to objections as to the relevancy or materiality or competency, but not as to the form or method of proof:

1. That among other railroad corporations whose entire capital stocks are owned by, and whose railroads are operated by the Erie

Railroad Company, are the Jefferson Railroad Company and the Erie and Wyoming Valley Railroad Company. The said Jefferson Railroad Company is a corporation organized under acts of the general assembly of Pennsylvania, approved February 19, 1849, April 28, 1851 (P. L. 1851, p. 726), and March 18, 1863 (P. L. 1863, p. 160), by which acts and a supplementary act of April 9, 1864 (P. L. 1869, p. 1293), it was authorized to build a railroad from a point in Pike County, Pennsylvania, on the Delaware River, to a point on the New York State line, in Susquehanna County, Pennsylvania, with one or more branches, all such branches not to exceed in length 30 miles, and in pursuance of which authority it has built or acquired a railroad from Carbondale, Pennsylvania, to a connection with the Erie Railroad at or near Lanesboro, Pennsylvania (a distance of about 40 miles), and a railroad from Honesdale, Pennsylvania, to Hawley, Pennsylvania (a distance of 9 miles), together with branch lines to various mines, which branches do not exceed in the aggregate 30 miles in length. The said Erie and Wyoming Valley Railroad Company was incorporated November 6, 1882, under an act of the general assembly of Pennsylvania entitled "An act to authorize the formation and regulation of railroad corporations," approved April 4, 1868, and the supplements thereto, to construct and operate a railroad in the counties of Luzerne, Lackawanna, Wayne, and Pike, from a point at or near Port Griffith, in Luzerne County, to Lackawaxen, in Pike County, all in the State of Pennsylvania.

The before-mentioned and any other published laws of Pennsylvania or other States affecting the Erie Railroad Company may, upon the hearing, be referred to and read from with the same force and effect as if introduced in evidence in their entirety.

The above facts are admitted for the purposes of this case only, and without prejudice to the rights of said railroad company in any other action or proceeding.

2. That the Hillside Coal and Iron Company has made the following contracts for the purchase of anthracite coal, containing provisions with respect to the prices to be paid, the length of term of the contract, the preparation and inspection of the coal purchased, and all other particulars, substantially the same as in the form of contract annexed to the Government's petition in this case marked Exhibit A, to wit:

Name of seller.	Date of contract.	Description of premises covered, giving names of collieries or washeries.
Robertson & Law	Nov. 1, 1900	Katydid colliery, Moosic borough, Lackawanna County, Pa
Nay Aug Coal Co	Feb. 2, 1901	Nay Aug No. 1 colliery, Dunmore borough, Lackawanna County, Pa.
Do	do	Nay Aug No. 2 colliery, same location.
Dolph Coal Co. (Limited)	Apr. 14, 1904	Dolph colliery, Jessup borough, Lackawanna County, Pa.
Temple Iron Co	July 1, 1901	Sterrick Creek colliery, Blakely borough, Lackawanna County, Pa.
Do	do	North West colliery, Fell Township, Lackawanna County, Pa.
Green Ridge Coal Co	Nov. 1, 1900	Green Ridge colliery, Dunmore borough, Lackawanna County, Pa.
Lackawanna Coal Co. (Limited.)	Oct. 21, 1903	Lackawanna colliery, Blakely borough, Lackawanna County, Pa.
M. F. Dolphin	Aug. 11, 1902	Brookside washery, Moosic borough, Lackawanna County, Pa.
Law & Fitzgibbon	Oct. 13, 1908	Oak Hill washery, Moosic borough, Lackawanna County, Pa.

* By consent of the parties and because the coal is not of standard quality, coal is not purchased under this agreement, but on a cheaper basis. No coal was being purchased from M. F. Dolphin when original statement on this subject was filed in this case.

CONCERNING NEW YORK, SUSQUEHANNA AND WESTERN RAILROAD COMPANY, WILKES-BARRE AND EASTERN RAILROAD COMPANY, NEW YORK, SUSQUEHANNA AND WESTERN COAL COMPANY, AND RELATED CORPORATIONS.

It is agreed that it may be taken as proved on behalf of the United States, subject to objections as to relevancy or materiality or competency, but not as to the form or method of proof:

1. That The New York, Susquehanna and Western Railroad Company is a corporation organized and existing under the laws of the States of New Jersey and Pennsylvania.

2. That the Wilkes-Barre and Eastern Railroad Company is a corporation organized March 8, 1892, under an act of the general assembly of Pennsylvania entitled "An act to authorize the formation and regulation of railroad corporations," approved April 4, 1868, and the acts supplementary thereto, to construct a railroad from a point in or near the city of Wilkes-Barre, in Luzerne County, through Lackawanna County, to a point on the Delaware River at or near the Delaware Water Gap in Monroe County, all in the State of Pennsylvania.

The before-mentioned and any other published laws of Pennsylvania or other States affecting the New York, Susquehanna and Western Railroad Company or the Wilkes-Barre and Eastern Railroad Company may, upon the hearing, be referred to and read from with the same force and effect as if introduced in evidence in their entirety.

The above facts are admitted for the purpose of this case only and without prejudice to the rights of said railroad company in any other action or proceeding.

3. That The New York, Susquehanna and Western Coal Company has made the following contracts for the purchase of anthracite coal,

containing provisions with respect to the prices to be paid, the length of term of the contract, the preparation and inspection of the coal purchased, and all other particulars, substantially the same as in the form of contract annexed to the Government's petition in this case marked Exhibit A, to wit:

Name of seller.	Date of contract.	Description of premises covered, giving names of collieries or washeries.
Jermyn & Co	Nov. 1, 1900	Jermyn No. 1 colliery, Old Forge borough, Lackawanna County, Pa.
Do	do	Jermyn No. 2 colliery, Old Forge borough, Lackawanna County, Pa.
Do	do	Jermyn No. 1 washery, Old Forge borough, Lackawanna County, Pa.
Do	do	Jermyn No. 2 washery, Old Forge borough, Lackawanna County, Pa.

CONCERNING DELAWARE, LACKAWANNA AND WESTERN RAILROAD COMPANY AND RELATED CORPORATIONS.

It is agreed that it may be taken as proved on behalf of the United States, subject to objections as to relevancy or materiality or competency, but not as to the form or method of proof:

1. That the Lackawanna and Western Railroad Company, a railroad corporation organized under the name of Liggett's Gap Railroad Company by authority of an act of the general assembly of Pennsylvania approved April 7, 1832 (P. L. 1832, p. 321), and the Delaware and Cobb's Gap Railroad Company, a railroad corporation organized under authority of an act of the general assembly of Pennsylvania approved April 7, 1849 (P. L. 1851, p. 757), were consolidated into one corporation under the name of Delaware, Lackawanna and Western Railroad Company by authority of an act of the general assembly of Pennsylvania approved March 11, 1853 (P. L. 1853, p. 163).

2. That the said Delaware, Lackawanna and Western Railroad Company has operated since many years prior to 1901 and now operates as a common carrier lines of railroad from Scranton and Pittston and divers other points in the Wyoming region of the anthracite coal fields in Pennsylvania, across the States of Pennsylvania and New Jersey to Hoboken in the last-named State, on the waters of New York Harbor, and across the States of Pennsylvania and New York to Buffalo, Oswego, Utica, and other points in the last-named State.

3. The before-mentioned and any other published laws of Pennsylvania or other States affecting the Delaware, Lackawanna and Western Railroad Company may, upon the hearing, be referred to and read from with the same force and effect as if introduced in evidence in their entirety.

4. That the said Delaware, Lackawanna and Western Railroad Company has made the following contracts for the purchase of anthracite coal, containing provisions with respect to the prices to be paid, the length of term of the contract, the preparation and inspec-

tion of the coal purchased, and all other particulars, substantially the same as in the form of contract annexed to the Government's petition in this case marked Exhibit A, to wit:

Name of seller.	Date of contract.	Description of premises covered, giving names of collieries or washeries.
Lackawanna Coal Co. (Limited)	Aug. 27, 1901	Lackawanna colliery.
Mount Lookout Coal Co	.....	Mount Lookout colliery.

5. That the said Delaware, Lackawanna and Western Railroad Company has made the following contracts for the purchase of anthracite coal, containing provisions with respect to the prices to be paid and the quantity of coal to be purchased, substantially the same as in the form of contract annexed to the Government's petition in this case marked Exhibit A, to wit:

Name of seller.	Date of contract.	Description of premises covered, giving names of collieries or washeries.
George F. Lee Coal Co	Mar. 11, 1903	Chauncey colliery.
Do	May 1, 1907	
North End Coal Co	May 26, 1906	North End colliery.
Clear Spring Coal Co	Sept. 21, 1901	Clear Spring colliery and washery.
Peoples' Coal Co	Oct. 26, 1899	Oxford mine.

(Adjourned until Tuesday, February 16, 1909, at 10.30 a. m., at the office of the United States district attorney, New York City.)

Met pursuant to adjournment at New York, Tuesday, February 16, 1909, at 10.30 o'clock a. m.

Present, the Examiner, and Messrs. McReynolds, Todd, Campbell, Warren, Moot, and Schaperkotter, of counsel.

Judge CAMPBELL (representing the Reading Company, the Philadelphia and Reading Railway Company, and The Philadelphia and Reading Coal and Iron Company). I am not responsible for or to any of the other defendants in this suit, and do not undertake to speak for them in any way, nor do I intend to undertake to represent them in any way. On behalf of the defendants whom I do represent I desire this record to be made. This suit, or, to be accurate, this series of multifarious and unrelated issues tendered in a single petition, was put at issue by the filing of the general replication of the petitioners January 28, 1908, and under the operation of the rules in ordinary cases the testimony should have been closed by April 28 following; nevertheless, without obtaining any order of the court or a judge enlarging the time, the plaintiff did not proceed with the taking of testimony until long after. May 25, 1908, after the expiration of the time limit, when no testimony had been taken, negotiations were entered upon and conducted with solicitors and officers for several of

the principal defendants and others for the preparation of and submission to counsel for the Government of statements taken from their private books containing certain data, to the extent that they have been introduced in evidence, now shown in "proof-sheet" form as Government exhibits.

It is not intended to criticise or object to this method of obtaining evidence of introducing proofs; on the contrary, the parties whom we represent have been and are of the opinion that this method of procedure is to be commended:

On the part of the counsel for the Government, that it has saved them from calling for the actual production before the Examiner of the books, records, and papers from which the data were compiled; from making their own examination into them and their own analysis of their contents, and from introducing into the record, by way of the oral examination of custodians, proof of the facts supposed by counsel for the Government to be material.

On the part of the defendants whom we represent, it has saved the expense, time, and trouble of producing before the Examiner the books, records, and papers, the attendance of the necessary custodians and counsel while the matters inquired of were put in the record through the oral examination of witnesses.

September 29, 1908, the summer vacation having intervened, no evidence having been so far introduced,

"The Government announced to counsel that it has been proceeding under the assumption that no objection would be made to the introduction of proof because of the expiration of the time allowed by the rules of the court, and asked that counsel now advise the Government's representatives if there is to be any objection raised for that reason."

"Counsel present stated that there would be no objection."

October 7, 1908, the first witness on behalf of the Government was called and through him the first testimony was presented.

From then until now the counsel for the Government have been assiduous and persistent in presenting their proofs, drawn from various sources, but largely from voluntary statements, from their records, of several of the many defendants.

In the meantime the oral testimony of many witnesses has been taken, and in connection therewith, and otherwise, great quantities of immaterial and irrelevant papers have been put into the record, without competent or legal proof.

Before we can determine what proofs we should present it is essential to our several defenses that solicitors and counsel should be fully advised of what the record shows.

The obvious and proper lack of authority in the Examiner to consider or report upon questions of evidence and in the absence of any general rule or order, we must ask the Court *in limine* to consider and determine whether the objectionable matter is properly in the record and to be met by testimony or proofs.

To enable us, however, to prepare and present our application to the court to "suppress," we should be supplied with the required printed copies of the testimony for our use and for the use of the court at the hearing of our rule to show cause why the objectionable matter should not be suppressed and stricken from the record.

As soon as possible after the printed record shall have been supplied us we will proceed with the utmost diligence to prepare the necessary motion to the court, and at the same time engage ourselves in such an analysis of this record as will enable us to determine with certainty what witnesses are necessary to be called to meet those matters which are supposed to be competently and properly proved by government testimony. We think it advisable, although that is a matter which we do not regard ourselves as particularly concerned in, that there ought to be, as soon as the record shall have been printed and supplied to the parties, a general consultation of all the defendants, including the individuals, so that some orderly and regular method can be devised for the production of proofs on their behalf severally, and so that it will not be necessary for counsel not particularly concerned to be in continual attendance upon the Examiner.

Until the Government shall furnish us with printed copies of this record we are not prepared to proceed nor to make any announcement whatsoever as to the time when we can be ready to proceed.

Mr. SCHAPERKOTTER (representing the Lehigh Valley companies). Judge Campbell's statements express the views of the clients I represent.

Major WARREN (representing The Temple Iron Company and Independents). For The Temple Iron Company and for certain independents, so called, that is to say, certain companies who have been summoned here by the supplemental bill or complaint or petition filed on behalf of the Government, it seems rather idle to reiterate those portions of the statement made by Judge Campbell for certain of the defendants with which I am personally concerned. So far as my clients are concerned, some of the statements he has made seem to me absolutely essential in order to enable me, representing my clients, at any rate, to present our defenses logically and with as reasonable speed as can be hoped we can attain. Many of my clients, and indeed many of the attorneys for several of the defendants, have no knowledge of the various adjournments, nor the condition of the record, nor the question of the relevancy of the testimony offered, so far as it has affected their rights under this supplemental petition, and I submit that if the counsel for the Government were to furnish the attorneys of record with printed copies of this evidence, it would facilitate the introduction of the evidence for the defendants, and I do not know any other way that they can reasonably be expected, under the rules of the Circuit Court, indeed of the Supreme Court of the United States, to be in a situation to prepare their several defenses.

Judge Moot (for the Erie companies). I undertook for my clients to go into the record without having printed copies of the evidence, but with the proof sheets for the exhibits, but I found the work so great that it was impossible for me, in the time I could devote to it, giving it the right of way of everything else, to do that between the last adjournment and this morning. I shall have to prepare myself before taking any further step at the present time. I think at the last adjournment I was not so impressed with the necessity for a printed copy of the evidence, and offered to undertake to do this work without such copy. I think the necessity for printed copies of the evidence is quite as great as anything said on that subject by Judge Campbell would suggest. In a case of this importance I do not think it is practicable for us to get along without printed copies of the evidence, for the reason that there is no counsel in position to speak for all the defendants, or even to speak for any considerable number of them. Many of the defendants have depended upon what I would call the neighborly offices of counsel present for informal information as to what was going on, but, so far as I can learn, they have all expected at the end to have a copy of the record, under the rules, so that they could find out for themselves and for their clients whether any case had been made against them that called for any proof or action on their part. On that theory many of them attended occasionally, and many of them have not even attended at all to speak of, so far as the record shows, or so far as my observation has gone. The interests of their clients are very vital, inasmuch as the Government's position, as stated in the petition here, if sustained, will mean ruin to many of those so-called independents.

Mr. McReynolds. The Government's position is this: At the hearing just before the Christmas holidays the Government announced to counsel that its evidence had been substantially completed. It was then understood that an adjournment would be taken until about the middle of January, and counsel for the defendants agreed that they would endeavor at that time to begin to take their proofs. When that time arrived the counsel for the defendants were not ready, and an adjournment was taken until to-day, the Government having announced at the hearing in January that, except for certain stipulations, the general tenor of which was understood between counsel, its proof was closed. The exhibits have been in print and furnished to counsel ten days or more ago, except certain lists of officers of defendants and certain freight rates, which are matters of record. Counsel for defendants have had typewritten copies of the evidence as it proceeded, and they have not demanded that the evidence be printed as it proceeded.

The Government now announces that it has completed its evidence in chief and asks that the Examiner at once return to the Court the evidence which has been heretofore taken in its behalf, and now demands of the Examiner that a day be fixed upon which the defendants may proceed with their evidence.

Judge CAMPBELL. Counsel for the Government have been laboring under a misapprehension if they have at any time supposed that the companies defendant which I represent had undertaken to prepare to introduce testimony in their own behalf until after printed copies of the testimony should have been supplied.

Mr. Schaperkotter joins in the statement made by Judge Campbell.

Major WARREN. Counsel for the Government have never asked me, so far as the companies that I represent are concerned, to agree to a time when we would be ready to proceed with our side, and the only conference we have had with one another as to any matters of proof has been with reference to a stipulation as to certain record evidence of matters affecting the interests of some of them, the items of which, as I understand it, have been agreed upon. That is the only suggestion that has been made to me in any way by them.

Judge MOOT. Speaking for the Erie Company, I think this should go on the record. I think the Government counsel is under a misapprehension as to counsel having agreed to do anything. My recollection is this: When the subject of the defendants going on was brought up I said I would make my best endeavors to give this case the right of way, to go on as soon as possible after the Government closed its case. Judge Campbell suggested the testimony should be printed. I said it would be a great convenience to have it, because then counsel would not have to do their work over again, because we would be able to make references to the pages as we went over it in printed form, but I did not attempt to speak, or never have, for any of the defendants except my client. Judge Campbell's position was one, my position was another, and so far as I recall none of the other counsel present said anything one way or the other.

Judge CAMPBELL. I desire the Examiner to note that counsel for the Reading Companies object to the Examiner undertaking to fix any time for proceeding with this testimony, and deny his power or authority to do so until he shall be notified by counsel for the defendants that they are ready to proceed.

(Defendant's counsel declined to fix a date to which the hearings shall be adjourned.)

(Adjourned.)

(For Examiner's return of plaintiff's evidence in chief, see ante, p. 1.)

O

Return of Examiner.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

THE UNITED STATES OF AMERICA, PLAINTIFF, *v.* READING COMPANY AND OTHERS, DEFENDANTS. } April sessions, 1907, No. 27. In equity.

I, Charles H. Guilbert, duly appointed by the Court as Examiner to take the testimony in the above-entitled cause, either within or without this district, and report the same to the Court, having heretofore, to wit, on the 23d day of February, 1909, reported to the Court the evidence in chief offered on the part of the plaintiff, and the evidence on the part of the defendants having been taken in the meantime, do now hereby certify that, beginning, pursuant to notice, on September 29, 1909, and continuing thereafter on September 30 and October 1, 1909, I have taken or caused to be taken and recorded all the testimony of the witnesses produced and the exhibits offered on the part of the plaintiff, in rebuttal, as well as all the proceedings connected therewith, the signing of the testimony by the witnesses respectively being waived by counsel; and that the following is a complete and true record of all such testimony, exhibits, and proceedings in rebuttal, the same beginning with the proceedings before the Examiner on September 29, 1909, and ending with the proceedings on October 1, 1909, and including Government Exhibit No. 190 to Government Exhibit No. 203, inclusive.

In witness whereof I have hereunto set my hand this 26th day of October, 1909.

CHARLES H. GUILBERT, *Examiner.*

Met pursuant to notice Wednesday, September 29th, 1909, at 10.30 a. m., room 47, Federal Building, New York City.

Present: The Examiner; J. C. McReynolds, esq., and G. Carroll Todd, esq., for the United States; Messrs. Campbell, Warren, Opdyke, Moot, De Forest, Schaperkotter, Platt, and Wells for certain defendants.

[The evidence of defendants appears in subsequent volumes.]

EVIDENCE IN REBUTTAL ON BEHALF OF THE UNITED STATES.

WILLIAM H. DAVIES, a witness for the plaintiff, having been duly sworn, was examined as follows:

Direct examination by Mr. Todd:

Q. What office do you hold with the Delaware and Hudson Company?—A. I am the comptroller of the Delaware and Hudson Company.

Q. How long have you been such?—A. Since November 1st, 1907.

Q. What was your connection with the company before that?—A. I was assistant comptroller.

Q. For how long?—A. From the fall of 1903, I think it was October that I was appointed assistant comptroller.

Q. You were subpœnaed to bring with you certain statements made up from the books and records of the Delaware and Hudson Company?—A. Yes, sir.

Q. Look at them and tell me first what the total tonnage of anthracite coal transported by the Delaware and Hudson Company to all points in 1900 was?—A. 6,614,002 net tons of two thousand pounds.

Q. Of that tonnage how much was shipped for the account of the Delaware and Hudson Company and its controlled companies?—A. 4,600,058 net tons.

Q. What in 1907 was the total anthracite coal tonnage transported by the Delaware and Hudson Company to all points?—A. 10,025,312 net tons.

Q. Of that tonnage how much was shipped by or for the account of the Delaware and Hudson Company and its controlled companies?—A. 8,314,261 net tons.

Q. What in the calendar year 1900 was the total initial anthracite tonnage transported from the mines by the Delaware and Hudson Company, as shown in its report to the bureau of anthracite coal statistics?—A. 3,973,859 tons.

Q. What portion of that tonnage was shipped by or for the account of the Delaware and Hudson Company and its controlled companies?—A. Probably all.

Q. What in the calendar year 1907 was the total initial anthracite tonnage transported from the mines by the Delaware and Hudson

Company, as shown in its report to the bureau of anthracite coal statistics?—A. 6,562,768 tons.

Q. What portion of that tonnage was shipped by or for the account of the Delaware and Hudson Company and its controlled companies?—A. Probably all.

Q. You were also subpœnaed to bring with you a statement from the books of the Delaware and Hudson Company showing the average rate per ton paid by the Delaware and Hudson Company for the transportation of anthracite coal from its mines to Weehawken, f. o. b. vessel, over the railroad of the Delaware and Hudson Company to Honesdale, and thence over the Erie Railroad to Weehawken, in each month from January 1, 1890, to December 31, 1900, inclusive, with the average distance from the mines of said company to Weehawken. Have you been able to make up such a statement?—A. I have not.

Q. Please state how far you have been able to comply with the requisition of the subpœna.—A. The books of the Delaware and Hudson Company do not contain any record of the transactions to give this required information. Covering the period in question these transactions were carried on by the New York sales department of the Delaware and Hudson Company, which was discontinued in 1902, and, upon removal of our general offices from 21 Cortlandt street in 1906, all the books of this department were destroyed as being of no further use to the company. We have found six vouchers, April, 1897, Honesdale to Weehawken docks, 41,578 tons weight, rate $0.9753; Dec., 1897, Honesdale to Weehawken docks, 49,628.06 tons weight, rate $1.0145; April, 1898, Honesdale to Weehawken docks, 38,760.18 tons weight, rate $0.7393; December, 1898, Honesdale to Weehawken docks, 80,669 tons weight, rate $0.7040; April, 1900, Honesdale to Weehawken docks, 36,995.16 tons weight, rate $0.5951; December 1900, Honesdale to Weehawken docks, 109,704.04 tons weight, rate $0.7581. These were paid to the Erie Railroad Company by the New York sales department. No similar vouchers can now be found.

Q. Those were the only months for which you could get the information?—A. Yes, sir.

Q. Can you account for the fact that you found those particular vouchers and not any others?—A. These vouchers, as I understand it, were out some time ago and were never put back in the files, and we had those right in the general offices.

Q. Do you mean, then, that you have not looked outside of your general offices for those other months?—A. We looked where we keep our records.

Q. How did those particular vouchers happen to survive?—A. As I say, they were taken out some time ago, and did not get back to the original files.

Q. They were taken out before the conflagration which destroyed the balance, do you mean?—A. No. I do not believe that any of these were destroyed by conflagration.

Q. You think that whole series is intact and that they were not destroyed?—A. That I could not say. I can make all sorts of suppositions.

Q. You mean, then, that you really have not made a complete examination to ascertain whether the remaining vouchers of that series are in the files of the company or not?—A. Yes, sir; we have made a complete examination as far as we could, and we have not been able to find them.

Q. Have you the rate from the mines to Honesdale?—A. The coal transported above, during the periods involved, had for the most part, if not altogether, been transported from the mines of the Delaware and Hudson Company to Honesdale by its gravity railroad in small cars, which were unloaded at Honesdale and reshipped by the coal cars of the Erie Company.

Q. You were not able to get the rate from the mines to Honesdale?—A. No, sir.

By Judge MOOT:

Q. I see that your figures that you have given of weight and rate do not specify the particular sizes of coal, as to whether it was pea or barley or rice or chestnut or stove or lump, or whatever it might have been. Do you remember whether the vouchers show the specific sizes that were transported or not?—A. I am under the impression that they do not.

Q. So you can not tell that?—A. I can not tell.

By Mr. TODD:

Q. Is it not the average rate on all sizes?—A. All sizes, as I understand it.

By Judge MOOT:

Q. Whether that "all sizes" happened to be the smallest size or the largest size, or various sizes, you can not tell?—A. I can not tell.

By Mr. PLATT:

Q. Does that statement purport to specify the total shipments for the months specified?—A. It does not. It only reports what is bought for any month's business.

Q. In this particular voucher?—A. Yes, sir. We could not show from this whether that covered all the previous month's shipments or not.

MARTIN P. BLAUVELT, a witness for the plaintiff heretofore sworn, having been recalled, was examined as follows:

Direct examination by Mr. TODD:

Q. You were subpœnaed to bring with you certain statements taken from the records of the Hillside Coal and Iron Company; the Erie Railroad Company; the New York, Susquehanna and Western Railroad Company; and the Pennsylvania Coal Company?—A. Yes

Q. Please state the date or dates on which the sixty-five per cent contracts made by the Hillside Coal and Iron Company and the New York, Susquehanna and Western Coal Company took effect.—A. Hillside Coal and Iron Company, Robertson and Law contract, took effect November 1st, 1900; Nay Aug Coal Company, November 1st, 1900; Dolph Coal Company, Limited, November 1st, 1900; Temple Iron Company, November 1st, 1900; Green Ridge Coal Company, November 1st, 1900; Lackawanna Coal Company, Limited, October 21st, 1903; Law and Fitzgibbon, October 13th, 1908; New York, Susquehanna and Western Coal Company, contract with Jermyn and Company, took effect November 1st, 1900.

Q. Please state what the total anthracite tonnage transported by the New York, Susquehanna and Western Railroad Company was to all points in the year 1900.—A. 1,338,714.04 gross tons.

Q. What portion of that was shipped by or for the account of the New York, Susquehanna and Western Coal Company or the Hillside Coal and Iron Company?—A. The New York, Susquehanna and Western Coal Company shipped 1,096,812.05 tons; the Hillside, 80,524.10 tons.

Q. What was the total anthracite tonnage transported to New York Harbor in the year 1900 by the New York, Susquehanna and Western Railroad Company?—A. For the year 1900 I can not furnish.

Q. What was the total anthracite tonnage transported to all points in 1900 by the Erie Railroad?—A. Calendar year 1900 I can not furnish.

Q. Can you furnish it for 1907?—AYes, sir; 8,093,991.00 tons.

Q. What portion of that was shipped by or for the account of the Hillside Coal and Iron Company, the Pennsylvania Coal Company, and the New York, Susquehanna and Western Coal Company?—A. By the Susquehanna and Western Coal Company, none; by the Hillside Coal Company, 2,646,000.18 tons; by the Pennsylvania Coal Company, 3,494,783.11 tons.

Q. What was the total anthracite tonnage transported to all points in 1907 by the New York, Susquehanna and Western?—A. 2,605,-964.00 tons.

Q. What portion of that was shipped by or for the account of either Hillside Coal Company, the Pennsylvania Coal Company, or the New York, Susquehanna and Western Coal Company?—A. The Susquehanna and Western Coal Company shipped none. The Hillside Coal and Iron Company shipped 861,854.12 tons. The Pennsylvania Coal Company shipped 1,338,410.03 tons.

Q. What was the total anthracite tonnage transported by the New York, Susquehanna and Western Railroad to New York Harbor f. o. b. in 1907?—A. 1, 489,173.01 tons.

Q. What portion of that was shipped by the Pennsylvania Coal Company, or the Hillside Coal and Iron Company, or the New York, Susquehanna and Western Coal Company?—A. The New York, Susquehanna and Western Coal Company shipped none. The Pennsyl-

[illegible] Coal Company shipped [illegible] tons. The Hillside Coal and Iron Company shipped [illegible] tons.

Q. Were you able to find what tonnage of anthracite coal was transported to New York Harbor by the Erie Railroad in 1907?—A. No, sir.

Q. Not you were for 1907?—A. Yes, sir.

Q. What was it in 1907?—A. [illegible] tons.

Q. What portion of that was shipped by the Pennsylvania Coal Company, the Hillside Coal and Iron Company, or the New York, Susquehanna and Western Coal Company?—A. The Pennsylvania Coal Company shipped [illegible] tons. The Hillside Coal and Iron Company shipped [illegible] tons. The New York, Susquehanna and Western Coal Company shipped none.

Q. Will you please state what portions of the total anthracite tonnage transported by the Erie Railroad in 1907, as reported to the Bureau of Railroads Coal Statistics, were shipped by the Hillside Coal and Iron Company, the Pennsylvania Coal Company, and the New York, Susquehanna and Western Coal Company?—A. The terms known as "Erie Railroad" in the table of tonnages for 1907 compiled by the Bureau of Railroads Coal Statistics, Commerce Exhibit No. [illegible], page [illegible], include coal moved over the Erie Railroad and the New York, Susquehanna & Western Railroad combined, and the portions of such tonnage shipped by the Pennsylvania Coal Company and the Hillside Coal & Iron Company were as follows:

[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]

Of the tonnage above stated portions originated on the following railroads: Erie Railroad, New York, Susquehanna & Western Railroad, New York, Ontario & Western Railway, Delaware & Hudson Company, Central Railroad of New Jersey.

Q. You were asked to produce a statement from the books of the Erie Railroad Company or the Pennsylvania Coal Company showing the tonnage and price paid by the Pennsylvania Coal Company for the transportation of anthracite coal from its mines to Watsonville, N. Y., by vessel over the Erie and Wyoming Valley Railroad and to Hamlin, and thence over the Erie Railroad, in each month from [illegible] to [illegible], inclusive. Were you able to make up such a statement?—A. No, sir. We have no record of that period in existence.

Cross-examination by Judge Dean.

Q. You said that you have no records for that period in existence. What became of them?—A. When the general offices of the coal companies and railroad companies were moved from 21 Cortlandt street

to No. 11 Broadway, about three years ago, all the old records which were not considered of any value were destroyed, and these were among the lot destroyed.

Q. When you answered counsel in several instances that you could not furnish the information called for, was it because that information could only have been obtained from the data contained in the records which were thus destroyed?—A. Yes, sir.

Q. That was done before this case was commenced or you ever heard of it?—A. Yes, sir; long before.

Q. These records that you have furnished for a period of time antedating that destruction you have furnished from the books of what companies?—A. Of the coal companies.

Q. And, so far as possible, where counsel called on you for information or statements, have you furnished that information or those statements, where you could obtain it, either from the books of the coal companies or any other source within your control?—A. I have.

Q. In this information that you have furnished of the coal hauled to New York Harbor points in 1906, also in 1907, do the figures given for the Erie and for the New York, Susquehanna and Western, respectively, mean that the tonnages given for those two companies separately were hauled by those companies over their own lines entirely and not hauled over the lines of any other railway any part of the distance?—A. They do not.

Q. What is the fact in that respect?—A. The coal given as hauled over the Erie, more or less of it is hauled part of the way over the Susquehanna, and the tonnage given as New York, Susquehanna and Western is hauled part of the way over the Erie.

Q. Are you able, or were you able, to state from your data, or that available to you, specifically the tonnages and the distances that were hauled inter-changeably in that manner?—A. No; I could not do it.

Q. Does the same answer apply to the figures you gave for anthracite coal shipped to all points in 1907 by the Erie Railroad Company?—A. Yes, sir. It does.

Q. In some instances was that tonnage hauled the greater part of the distance over the New York, Susquehanna and Western?—A. It might have been. There were some cases of that kind.

Q. In that case you cannot there separate the distances so as to differentiate between the two?—A. No, sir.

Robert W. de Forest, a witness for the plaintiff, heretofore sworn, being recalled, was examined as follows:

Direct examination by Mr. Todd:

Q. You have produced some statements from the records of the Central Railroad of New Jersey and the Lehigh and Wilkes-Barre Coal Company. Will you refer to those and state, first, what the circular or quoted prices of the Lehigh and Wilkes-Barre Coal Company for prepared sizes of anthracite, with all regular discounts taken off, were at Port Johnston f. o. b. vessel in each month from

January 1st. 1898, to January 1st, 1900?—A. I have, pursuant to your request, obtained this information, and present it in the form of a schedule.

(The schedule is offered in evidence, marked "Government Exhibit No. 191.")

Q. Will you next state the date or dates the several sixty-five per cent contracts made by the Lehigh and Wilkes-Barre Coal Company took effect?—A. I have obtained this information, pursuant to your request. It is matter of which I had no personal knowledge at the time. The three contracts with individual coal companies in which the Lehigh and Wilkes-Barre is concerned took effect on their dates; that is, the contract with the Parrish Coal Company and the contract with the Red Ash Coal Company on May 1st, 1901, and the contract with the Melville Coal Company on June 1st, 1901. Subsequently, however, settlements under those contracts were made retroactive and effective as of the date when wages were raised ten per cent, that is, November 1st, 1900.

Q. State, please, for the calendar years 1900 and 1907 what the anthracite tonnage transported by the Central Railroad of New Jersey to all points and to New York Harbor f. o. b. vessel was, and in each instance the portions shipped by or for the account of the Lehigh and Wilkes-Barre Coal Company and the Lehigh Coal and Navigation Company and the Philadelphia and Reading Coal and Iron Company.—A. I have obtained this information as you requested, and present it in the following schedule:

Statement from books of the Central Railroad of New Jersey showing for the calendar years 1900 and 1907 the anthracite tonnage transported by that railroad to all points and to New York Harbor f. o. b. vessel and the portion in each instance shipped by or for the account of the Lehigh and Wilkes-Barre Coal Company and the Lehigh Coal and Navigation Company and Philadelphia and Reading Coal and Iron Company, each, whether produced, purchased, or otherwise acquired by them.

TO ALL POINTS.

	1900.	1907.
	Net tons.	*Net tons.*
Lehigh and Wilkes-Barre Coal Co	3,161,246.12	5,174,525.13
Lehigh Coal and Navigation Co	1,930,978.12	2,817,901.08
Philadelphia and Reading Coal and Iron Co	285,415.01	242,171.08
Other shippers	876,916.18	1,244,441.10
Total	6,314,567.03	9,479,039.19

TO NEW YORK HARBOR, F. O. B. (INCLUDED IN TONNAGE "TO ALL POINTS").

Lehigh and Wilkes-Barre Coal Co	1,502,394.16	2,454,906.03
Lehigh Coal and Navigation Co	748,855.14	1,362,923.05
Philadelphia and Reading Coal and Iron Co	55,770.17	24,933.04
Other shippers	58,473.10	165,970.00
Total	2,365,494.17	3,908,732.02

Q. Please state what the anthracite coal tonnage, in long tons, and the gross receipts therefrom, of the Central Railroad Company of New Jersey, were in the fiscal years ending June 30, 1907 and 1908,

respectively; the bituminous coal and coke tonnage, long tons, and the gross receipts therefrom; the general merchandise tonnage, net tons, and the gross receipts therefrom?—A. I have obtained this information as requested by you and present it in the form of the following schedule:

Statement from the books of Central Railroad of New Jersey showing for the fiscal years ended June 30, 1907 and 1908, its anthracite coal tonnage (long tons) and the gross receipts therefrom; its bituminous coal and coke tonnage (long tons) and the gross receipts therefrom, and its general merchandise tonnage (net tons) and the gross receipts therefrom.

	Tons.	Gross receipts.
1907.		
Merchandise	13,980,916	$8,400,021.21
Bituminous coal and coke	4,749,161	1,705,641.22
Anthracite coal	7,824,258	9,312,268.04
Total	28,063,145	19,417,930.47
1908.		
Merchandise	11,665,173	7,578,288.95
Bituminous coal and coke	4,385,228	1,478,456.63
Anthracite coal	8,628,506	9,983,899.81
Total	26,240,555	19,010,645.39

Q. What were the published freight rates of the Central Railroad Company of New Jersey for the transportation of the various sizes of anthracite coal from the mines to New York Harbor f. o. b. vessel from January 1, 1892, to January 1, 1899?—A. I have sought to obtain this information, and expect to do so, but within the few days that have elapsed since you made your request I have not yet been able to receive it. I will hand it to you when received, and it may be added to this testimony in the form of a schedule at this point as part of my answer:

Tabulated statement of the published freight rates of the Central Railroad Company of New Jersey for the transportation of each size of anthracite coal from mines to New York Harbor, f. o. b. vessel, from January 1st, 1892, to January 1st, 1899.

No. of tariff.	Period.	To—	From Lehigh region.			From Wyoming region.		
			Prepared.	Pea.	Buck and culm.	Prepared.	Pea.	Buck and culm.
No. A. 1. Seventh revision.	July 29th, 1889, to September 12th, 1892.	Elizabethport, N.J..	1.70	1.40	1.20	1.75	1.45	1.25
		Pt. Johnston, N.J....	1.70	1.40	1.20	1.75	1.45	1.25
		Jersey City, N. J....	1.70	1.40	1.20	1.75	1.45	1.25
No. A. 1. Eighth revision.	September 12th, 1892, to April 1st, 1893.	Elizabethport, N.J..	1.85	1.55	1.35	1.85	1.55	1.35
		Pt. Johnston, N.J....	1.85	1.55	1.35	1.85	1.55	1.35
		Jersey City, N. J....	1.85	1.55	1.35	1.85	1.55	1.35
No. A. 1. Ninth revision.	April 1st, 1893, to April 10th, 1894.	Elizabethport, N.J..	1.70	1.40	1.20	1.70	1.40	1.20
		Pt. Johnston, N.J....	1.70	1.40	1.20	1.70	1.40	1.20
		Jersey City, N. J....	1.70	1.40	1.20	1.70	1.40	1.20
No. A. 1. Tenth revision.	April 10th, 1894, to September 7th, 1896.	Elizabethport, N.J..	1.50	1.40	1.20	1.50	1.40	1.20
		Pt. Johnston, N.J....	1.50	1.40	1.20	1.50	1.40	1.20
		Jersey City, N. J....	1.50	1.40	1.20	1.50	1.40	1.20
No. A. 100	September 7th, 1896, to January 1st, 1905.	Elizabethport, N.J..	1.65	1.40	1.20	1.55	1.40	1.20
		Pt. Johnston, N.J....	1.55	1.40	1.20	1.55	1.40	1.20
		Jersey City, N. J....	1.55	1.40	1.20	1.55	1.40	1.20

Q. What portion of the freight traffic originating on the Central Railroad of New Jersey in 1900 and 1908 was anthracite coal?—A. This information I have obtained, and it is as follows:

Statement from books of Central Railroad of New Jersey showing what proportion of the freight traffic originating on that railroad in the years 1900 and 1908 was anthracite coal.

	Net tons.
1900	
Total tonnage	8,731,891
Anthracite coal	5,968,934, equals .683%
1908.	
Total tonnage	12,622,329
Anthracite coal	8,672,734, equals .687%

Q. You were also asked to produce a statement from the books of the Central Railroad of New Jersey showing the average distances it hauled its anthracite tonnage and all other freight tonnage, respectively, and its gross revenue per net ton per mile from the transportation of anthracite and from all other freight, respectively, for the fiscal year ending June 30, 1908?—A. I have obtained this information and produce it in the form of the following statement:

Statement from books of Central Railroad of New Jersey showing the average distances it hauled its anthracite tonnage and all other freight tonnage, respectively, and its gross revenue per net ton per mile from the transportation of anthracite and from all other freight, respectively, for the fiscal year ended June 30, 1908.

RAIL LINES.

	Net tons carried.	Net tons 1 mile.	Average distance.
			Miles.
Anthracite coal	9,663,927	1,138,426,930	117.802
Other freight	16,576,628	930,265,208	56.119

	Total revenue.	Revenue per net ton.	Revenue per net ton-mile.
Anthracite coal	$9,099,014.77	$0.94154	$0.00799
Other freight	8,368,055.64	.50481	.00899

Q. You were also asked to produce a statement taken from the books of the Central Railroad of New Jersey showing the division of its freight traffic coming to New York Harbor in 1900 and in 1907 into anthracite coal, bituminous coal, and coke and general merchandise, with gross receipts from each class?—A. I have obtained this information and produce the following statement:

Statement from Central Railroad of New Jersey showing a division of its freight traffic coming to New York Harbor in 1900 and 1907 into anthracite coal, bituminous coal, and coke and general merchandise, with gross receipts from each class.

	Net tons.	Gross revenue.
Year 1900.		
Merchandise	958,468	$971,769.74
Bituminous coal and coke	741,175	367,962.33
Anthracite coal	2,544,812	3,079,004.70
Year 1907.		
Merchandise	1,948,916	2,038,040.03
Bituminous coal and coke	1,126,591	565,891.10
Anthracite coal	4,419,930	5,338,579.59

Q. You were also requested to produce a copy of the answer of the Central Railroad of New Jersey in the suit of Stockton, Attorney-General, against the Central Railroad of New Jersey, in the court of chancery of New Jersey, reported in 50th New Jersey Equity, page 52.—A. I have in my hand a copy of that answer.

Judge CAMPBELL. I object to any part of the answer produced by the witness being offered in evidence, unless the whole answer is put in.

Judge MOOT. I object to any part of the answer being put in evidence, on the ground that it is wholly collateral and extraneous, and if there be a conspiracy that occurred in 1896, as charged in this petition, the other companies can not be affected by that charge with the act of one company in 1892 before the conspiracy was formed. I give notice that I will move to strike the answer from the record if any part of it is put in evidence.

Mr. PLATT. I concur in the last objection, and also object on the ground that it is not relevant or competent in any way as against the Lehigh Valley Railroad Company or the Lehigh Valley Coal Company, defendants.

Mr. DE FOREST. Counsel for the Central Railroad Company of New Jersey objects to the answer as immaterial and irrelevant, as relating to a period long anterior to the present litigation, and distinctly understands that it is received only under the general objection to all testimony, and subject to motion to strike out, because it is not rebuttal.

(Answer offered in evidence and marked Government Exhibit No. 190.)

Q. Will you please furnish a statement showing what portions of the anthracite tonnage of the Central Railroad of New Jersey in the calendar years 1900 and 1907, respectively, as reported to the bureau of anthracite coal statistics, were shipped by the Lehigh and Wilkes-Barre Coal Company, the Lehigh Coal and Navigation Company, and the Philadelphia and Reading Coal and Iron Company?—A. This is information for which you ask me now the first time, which I have no doubt I can obtain just as I have obtained other information, and will

be glad to do so to the extent of my ability, and present it as an answer to this question. The statement follows:

Portions of the total anthracite tonnage transported from the mines by Central Railroad of New Jersey in calendar years 1900 and 1907, as reported to the Bureau of Anthracite Coal Statistics, which was shipped by or for the account of Lehigh and Wilkes-Barre Coal Company, Lehigh Coal and Navigation Company, and Philadelphia and Reading Coal and Iron Company.

	1900.	1907.
	Gross tons.	*Gross tons.*
Lehigh and Wilkes-Barre Coal Company	2,895,252	5,080,486
Lehigh Coal and Navigation Company	1,854,696	2,618,775
Philadelphia and Reading Coal and Iron Company	(None.)	(None.)
Other shippers	559,908	1,014,852
Total	5,309,856	8,714,113

Q. Is the rate of the various sizes of anthracite coal from the mines to Port Johnston or New York Harbor the same as to Elizabethport?—A. I so understand.

Cross-examination by Judge CAMPBELL (on behalf of the Reading companies alone, not having objected to the introduction of this answer):

Q. In this case of the State of New Jersey on the information of Stockton, attorney-general, against the Central Railroad Company of New Jersey and others, it seems on the paper which you have presented that you were one of the counsel for the Central Railroad Company of New Jersey in the filing of these papers?—A. That is true.

Q. There are attached to this document, which you have presented on the request of the government counsel, numerous and various supporting affidavits and documentary evidence, and also copies of certain orders in the Court of Errors and Appeals, which include the final disposition of the cause. I would thank you to read all this into the record.

Mr. PLATT. I desire this to be taken subject to the same objection and motion on the part of the Lehigh Valley Railroad and the Lehigh Valley Coal Company.

A. I hand the record to the stenographer so that he may make an exact transcript thereof.

The transcript of the record is as follows:

Affidavit of J. Rogers Maxwell.
Supplemental Report of C. R. R. Co. of N. J. to Stockholders dated April 8, 1892.
Minutes of stockholders' meeting approving lease.
Affidavit of S. M. Williams.
Affidavit of H. C. Fahnestock.
Affidavit of Henry Graves.
Affidavit of Charles W. Thomae.
Affidavit of R. T. Davies.
Affidavit of C. S. Hoffman.
Affidavit of Frederick W. Paul, retail prices at Newark.

Affidavit of Marvin Dodd, retail prices at Newark.
Affidavit of William V. Toffey, retail prices at Jersey City.
Affidavit of Allison Dodd, retail prices at Jersey City.
Affidavit of Charles W. Irwin, retail prices at Elizabeth.
Affidavit of James W. Wall, jr., retail prices at Elizabeth.
Affidavit of Sidney S. Thompson, retail prices at Elizabeth.
Affidavit of Paul T. Norton, retail prices at Elizabeth.
Affidavit of Wm. H. McCormick, retail prices at Perth Amboy.
Affidavit of Edwin Loomis, retail prices at Plainfield.
Affidavit of Edwin H. Holmes, retail prices at Plainfield.
Affidavit of Joseph R. Hoffman, retail prices at Lebanon.
Affidavit of Stephen K. Large, retail prices at Whitehouse.
Affidavit of Isaac W. Searing, retail prices at Dover.
Proofs relating to suit of Alfred Mills et al. *v.* C. R. R. Co. of N. J.
Proofs relating to ownership of Lehigh and Wilkesbarre stock.
Order of Court of Chancery approving readjustment agreement of February 28, 1878:
A. Proceedings in chancery relating to ownership of Lehigh and Wilkesbarre stock.
B. Order of United States court authorizing general mortgage, which included Lehigh and Wilkesbarre stock.
C. Extract from adjustment mortgage containing description of Lehigh and Wilkesbarre stock thereby mortgaged.
D. Extract from general mortgage containing description of Lehigh and Wilkesbarre stock thereby mortgaged.
Lease of Central Railroad Company of New Jersey to Port Reading Railroad Company follows.
Tripartite agreement follows lease.
Charter of Central Railroad Company of New Jersey and supplements follow tripartite agreement.

STATE OF NEW YORK,
City and county of New York. } ss:

J. ROGERS MAXWELL, being duly sworn, according to law, on his oath says:

I am president of the Central Railroad Company of New Jersey, and have been such for upwards of five years last past. I have read the answer of the Central Railroad Company of New Jersey to the information of John P. Stockton, attorney-general of the State of New Jersey, in behalf of said State.

The lease of the railroad of the Lehigh Coal and Navigation Company and the purchase of equipment in connection with and at the time of said lease, referred to in clauses 9 and 10 of the information and clauses 3 and 4 of the answer, was made on March 31st, 1871. This railroad, commonly known as the Lehigh and Susquehanna Railroad, connects with the Central Railroad of New Jersey at Phil-

lipsburg. The making of said lease and the purchase of equipment made in connection with it has been notorious for more than twenty-one years, and the power of the Central Company to enter into this transaction has never been questioned by the public authorities of the State of New Jersey or any other State, or by any of its stockholders. Said lease and said rolling stock have been and are part of the property included in its adjustment mortgage, dated May 1, 1878, and in its general mortgage, dated July 1, 1887. The leased road furnishes its only connection with the coal regions of Pennsylvania and its only connection from Scranton and Wilkesbarre to the west, north, and south. The maintenance of this lease is essential to its prosperity.

The Central Railroad of New Jersey has never purchased, nor does it own any coal lands, nor has it expended any money for coal lands, nor has it organized any coal company to hold coal lands, nor has it issued the bonds of any such coal company, nor has it ever entered into nor does it conduct nor has it ever conducted the business of mining or selling or producing coal. At or about the time of its lease of the Lehigh and Susquehanna Railroad aforesaid, as I am informed and believe, the Central Railroad Company acquired a majority of the stock of said Lehigh and Wilkesbarre Coal Company, which was and is a coal company owning and working coal lands along the line of the Lehigh and Susquehanna Railroad, its leased railroad in Pennsylvania. The Central Railroad was at the time, as it still is, engaged in the business of transporting anthracite coal between the coal regions of Pennsylvania and markets in and beyond the State of New Jersey, in competition with other anthracite carrying roads, and in order to secure for its own road the transportation of coal produced at the mines of said coal company, and for the inhabitants of the State of New Jersey and other consumers reached by its lines, an adequate supply of anthracite coal at reasonable prices, and also to secure for itself the fuel necessary to operate its railroad, it became advisable and necessary for it to own an interest in the stock of said coal company. Otherwise, other railroad companies or persons interested in other railroad companies, by acquiring such an interest, might have diverted the transportation of such coal to other lines and thereby have prevented the Central Company from transporting it on favorable terms to consumers on its lines, or from supplying itself with fuel. The Central Company has continued to hold this stock. Its ownership thereof has been notorious and well known to the executive, legislative, and judicial departments of the State of New Jersey and to the inhabitants of that State, as well as to its stockholders. Its right to own this stock has never been questioned, and, on the contrary, has been universally acquiesced in and approved of. This stock constituted a portion of its assets when it was declared insolvent in 1877, and was then transferred by order of the Court of Chancery to the receiver of its property then appointed by said court. This stock was a part of the property delivered back by such receiver to it, by decree of the

Court of Chancery, on termination of its receivership in 1883. It was part of the property included in its adjustment mortgage of May 1, 1878, the execution of which was part of the plan of reorganization then carried out by permission of the Court of Chancery, and was also included in the general mortgage of July 1, 1887, the execution of which was authorized by the United States Circuit Court for the District of New Jersey. Both of these mortgages were at or about the time of their date duly and publicly recorded in the office of the secretary of state and in the proper county clerk's and register's offices in New Jersey.

The Central Company, after it became interested as stockholder in the Lehigh and Wilkesbarre Coal Company, and previous to the time when it was declared insolvent in 1877, guaranteed the payment of bonds of said coal company.

The lease of February 12, 1892, to the Port Reading Railroad Company and the tripartite agreement of the same date between the Central Railroad Company of New Jersey, the Port Reading Railroad Company, and the Philadelphia and Reading Railroad Company were duly executed by me as president of the Central Company, by authority of the board of directors of said company. Delivery of possession was made pursuant to the terms of said lease, and the fact of the execution of said papers, as well as the fact of delivery of possession, was stated by me in a supplemental report, dated April 8, 1892, a copy of which was sent to each stockholder of the Central Railroad previous to its annual meeting, which occurred on May 6th. At this annual meeting said supplemental report was presented to the stockholders, and said lease and tripartite agreement were submitted to them for their action. Out of the 224,670 shares of stock of the Central Company issued at the date of said meeting 195,817 shares were represented at this meeting, and on a vote to authorize, ratify, and confirm the execution and delivery of said lease and tripartite agreement, all of the said 195,817 shares voted in favor thereof, and no stockholders voted in opposition thereto. A copy of said supplemental report and a copy of the proceedings of the stockholders' meeting relating to said lease and tripartite agreement are appended hereto as part of this affidavit.

The chief business considerations which induced the Central Railroad Company of New Jersey to execute these instruments are set forth in the supplemental report to which I have referred. I believe that the advantages of the alliance thereby made with the Philadelphia and Reading Railroad and its system enure as well to the inhabitants of New Jersey on the line of the Central Railroad and its branches as to its stockholders, and that greater railroad facilities and greater probable extension of railroad facilities in the future are secured thereby for the people of the State of New Jersey than could otherwise have been obtained.

It is true that the execution and delivery of said lease was dependent upon the execution and delivery of the said tripartite agreement, because, except for the tripartite agreement and the traffic thereby retained and secured, there would not have been adequate guaranty for the alliance with the Reading system of railroads, which the Central Company sought to make, and for the increased traffic facilities resulting from connection with such system, nor, except for such traffic and traffic facilities and the earnings thereby secured to the Central Railroad of New Jersey, would the Port Reading Railroad Company be certainly able to perform the convenants of said lease. While this is true and while the lease would not, in my opinion, have been authorized by the directors of the Central Company, or its stockholders, except for the close and friendly relations which exist between those persons who control the Philadelphia and Reading Railroad Company and its policy and those who control the Port Reading Railroad Company and its policy, it is none the less true that this lease was not intended by the Central Company, or by any of its officers or directors, to be a cover or means to effect a transfer of the actual exercise and enjoyment of any corporate franchises or property of the Central Company to the Philadelphia and Reading Railroad Company, or to effect any lease or transfer of any of its franchises or property or the performance of any of its duties to the Philadelphia and Reading Railroad Company. On the contrary, there was and is on the part of the Central Company, its officers and directors, no intention respecting the matters set forth in said lease and tripartite agreement other than is disclosed by said instruments.

There were and are no other instruments executed and delivered between the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company, and the Port Reading Railroad Company vesting any franchises or property of the Central Railroad Company of New Jersey in the Philadelphia and Reading Railroad Company.

There have been no acts of the Central Railroad Company of New Jersey, to my knowledge, tending to a monopoly of the business of mining and selling anthracite coal, nor have the Philadelphia and Reading Railroad Company, the Easton and Amboy Railroad Company and the Central Railroad Company of New Jersey been miners, producers, or sellers of coal, or competitors, or in active and continual competition with each other in the coal business; nor was the intent of the Central Company, nor of the other parties to said lease and tripartite agreement, so far as I am aware, to combine said three corporations in the conduct of the coal business and to put an end to all competition whatever between them; nor do said three corporations, by the ownership and control of anthracite coal lands in the State of Pennsylvania, own or control any anthracite coal fields, nor was the intent of the Central Company, nor, so far as I am aware, the intent of the other parties to said lease and tripartite agreement, to control the market in the State of New Jersey for the supply and

sale of anthracite coal, or to fix the price thereof at such rates as would be most profitable to said corporations; nor do said instruments or the acts on the part of the parties thereto set forth in the information, tend directly to a monopoly of the trade of anthracite coal in the State of New Jersey and to the oppression of the inhabitants thereof; nor is, nor was, the Philadelphia and Reading Railroad Company, so far as I am aware, engaged in the execution of any scheme or contrivance to carry into effect a monopoly of the anthracite coal trade in the State of New Jersey, or to arbitrarily or artificially increase the profits of the coal business in New Jersey, nor has the Philadelphia and Reading Railroad Company, so far as I am aware, increased the prices of anthracite coal, nor is it now selling anthracite coal at greatly increased rates per ton beyond the prices which were asked for the same quality and class of anthracite coal at or before the time of the execution of said lease and agreement, or at all.

Speaking with knowledge as to the Central Railroad Company of New Jersey, and upon information and belief as to the Philadelphia and Reading Railroad Company and the Port Reading Railroad Company, none of said companies own any coal lands, or mine or sell any coal, and could not even if they would, acting either separately or together, fix or increase the price of anthracite coal, or create any monopoly in the business of mining or selling anthracite coal, or put an end to competition in the price or sale of such coal. On the contrary, the only particular in which, so far as I am aware, the corporate action of said railroad companies has affected or can affect the price of coal is in the tolls which as common carriers they may charge for transporting it from the coal regions of Pennsylvania to market, and these tolls are, and at all times since my official connection with the Central Company have been, less than the legal rates which these companies are authorized to charge for this service. These tolls have not been increased since the date of said lease.

I have read the affidavits served with the information respecting an alleged rise in the price of coal at 15 different points in the State of New Jersey. Of these 15 points, viz, Newark, Washington, Perth Amboy, Morristown, Orange, New Brunswick, Paterson, Jersey City, Hackensack, Trenton, Red Bank, Passaic, Plainfield, Hoboken, and Elizabeth, only seven, viz, Newark, Perth Amboy, Jersey City, Trenton, Red Bank, Plainfield, and Elizabeth, are on the railroads of the defendant companies, or on railroads owned, leased, controlled, or operated by them or either of them, and of these seven there is but a single one, viz, Plainfield, to which coal is not or can not be supplied over other railroads carrying coal in competition with the defendant companies and over which miners ship coal for sale in competition with coal shipped by miners reaching market over lines of the corporations defendant. Newark is or can be supplied with coal over the lines of the Delaware, Lackawanna and Western Railroad, the Penn-

sylvania Railroad, and the New York, Lake Erie and Western Railroad.

Perth Amboy is or can be supplied with coal over the lines of the Pennsylvania Railroad, as is also the case with Trenton, Red Bank, and Elizabeth.

Jersey City is or can be supplied with coal over the lines of the Delaware, Lackawanna and Western Railroad, the Pennsylvania Railroad, the New York, Lake Erie and Western Railroad, and the New York, Susquehanna and Western Railroad.

Under this statement of facts, I am of the opinion that even if all the individuals and corporations who are engaged in mining coal and can ship their product to market over the lines of the railroad corporations defendant should combine together to put an end to competition, their efforts would be ineffectual, because they would be constantly liable to competition from miners shipping to the same markets over other lines of railroad.

I have caused inquiries to be made as to what rise in the price of coal, if any, has been made between the date of said lease and the filing of the information, and also as to what relation the present prices of coal bear to those at which coal has been bought and sold at previous times under the laws of demand and supply and the conditions of competition existing previous to the making of said leases. I am informed and believe that the facts on this subject are as follows:

1. There has been no rise on the average in the retail price of coal to consumers between the date of the lease and the present time at any important points in the State of New Jersey on the lines of the Central Company.

2. The retail prices of coal at such points are not now in excess of what they have been on the average during the past six years.

3. While there has been a slight rise in the wholesale price of coal to middlemen or dealers at some points on the line of the Central Railroad between the date of the lease and the present time, there has been no greater rise than has frequently taken place in the past from time to time under the varying conditions of the coal business, nor are the present wholesale prices higher on an average than the average of such prices during the past six years.

So far as I am aware, the Central Railroad Company, its officers and directors, at the time of the execution of said lease had no accurate knowledge as to whose property the Port Reading Railroad was or as to the purpose of its organization and existence or as to who were its owners, except that they supposed it to be organized and controlled by persons interested in the Philadelphia and Reading Railroad Company mainly to secure an outlet for the traffic of that railroad, and particularly for its coal traffic to and from tide waters of New York Harbor. I am, and was at the time, generally familiar with the facts disclosed by its certificate of organization and other

papers publicly filed, and believed it to be a railroad corporation duly organized under the general railroad law of the State of New Jersey, and knew that it connected with and intersected the Central Railroad of New Jersey near Sewaren, in Middlesex County.

J. R. MAXWELL.

Sworn and subscribed before me this 27th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

Supplemental report of the directors of the Central Railroad Company of New Jersey, April 18, 1892.

The board of directors submit the following additional statement for the information of the stockholders of the Central Railroad Company of New Jersey:

Before the issue of the foregoing report, and as the result of negotiations extending through several months, your board have concluded a lease and traffic contract, under which your railroads are now being operated by the Port Reading Railroad Company and in connection with the Philadelphia and Reading Railroad system.

The lease to the Port Reading Railroad Company is for 999 years. It secures to your company the seven per cent dividend heretofore paid, together with one-half of the net earnings above seven per cent up to the maximum of ten per cent per annum. Performance of its covenants is guaranteed by the Philadelphia and Reading Railroad Company, and it is further secured by a deposit of bonds in trust. In addition thereto, the Central Railroad Company will continue to receive income from certain real estate and other properties not included in the lease.

This arrangement takes effect in its accounting as of January 1, 1892. It is intended to secure for your railroad its present traffic and its natural growth and development, and in addition, by the guarantee of common interest, the benefit of whatever traffic is controlled and influenced by the Reading system and is naturally tributary to your road and terminals. It prevents a diversion of traffic which might otherwise have resulted from the lease of the Lehigh Valley Railroad by the Philadelphia and Reading Company.

It is fair to expect, as the further results of this alliance, with the cooperation of other large coal producing companies, greater uniformity in the prices of coal, steadier employment for the laboring classes in the coal regions, the avoidance of needless and expensive competition between producers, and the establishment of economies which, without undue burden to consumers, will bring to the stockholders adequate returns for their capital.

In both the lease and traffic contracts every safeguard has been provided for the preservation and development of your property.

[illegible]

Reading Railroad Company, dated February 12, 1892, and the tripartite contract between the Central Railroad Company of New Jersey, the Philadelphia and Reading Railroad Company, and the Port Reading Railroad Company, of even date therewith, do hereby certify that there were voted in favor of said resolution 195,817 shares and that no votes were cast against said resolution.

SAMUEL KNOX.
JOHN L. CONOVER.
JOSEPH JANES, Jr.

Jersey City, May 6, 1892.

STATE OF NEW YORK,
City and county of New York, } ss:

Samuel Knox, being duly sworn, on his oath saith: I am secretary of the Central Railroad Company of New Jersey, and was secretary of the annual meeting of its stockholders duly held on May 6th, last. The foregoing are correct extracts from the minutes of said meeting.

SAML. KNOX.

Sworn to before me this 28th day of June, 1892.

BEN. V. D. FISHER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York, } ss:

Stephen M. Williams, being duly sworn, on his oath says: I am second vice-president and controller of the Central Railroad Company of New Jersey. I have been continuously connected with said company for more than ten years last past and am familiar with its affairs, and particularly with all the facts set forth in the affidavit of J. Rogers Maxwell, verified herein on June 27, 1892, which I have read. All the facts therein set forth on knowledge are true. All the facts therein set forth on information and belief I believe to be true.

S. M. WILLIAMS.

Sworn to before me this 28th day of June, 1892.

BEN. V. D. FISHER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York, } ss:

Harris C. Fahnestock, being duly sworn according to law, on his oath saith:

I am vice-president of the First National Bank of the City of New York and one of the directors of the Central Railroad Company of

New Jersey. I have been such director continuously for upwards of five years last past.

I have read the affidavit of J. Rogers Maxwell, president of the Central Railroad Company of New Jersey, to the information brought by John P. Stockton, attorney-general of the State of New Jersey, against the Central Railroad Company of New Jersey and other railroad companies. The facts therein stated as to the Central Railroad Company of New Jersey and the knowledge and intention of its officers and directors are true, and I confirm the same by this affidavit.

H. C. FAHNESTOCK.

Sworn to before me this 28th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } ss:

Henry Graves, being duly sworn according to law, on his oath saith:

I reside at Orange, New Jersey; am vice-president of the Liberty National Bank of the City of New York and one of the directors of the Central Railroad Company of New Jersey. I have been such director continuously for upwards of five years last past.

I have read the affidavit of J. Rogers Maxwell, president of the Central Railroad Company of New Jersey, to the information brought by John P. Stockton, attorney-general of the State of New Jersey, against the Central Railroad Company of New Jersey and other railroad companies. The facts therein stated as to the Central Railroad Company of New Jersey and the knowledge and intentions of its officers and directors are true, and I confirm the same by this affidavit.

HENRY GRAVES.

Sworn to before me this 28th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } ss:

Charles W. Thomas, being duly sworn, on his oath saith:

I reside at Bound Brook, New Jersey, and for more than ten years last past have been continuously in the employ of the Lehigh Valley Coal Company, which has been engaged in the wholesale coal business at Newark, New Jersey, and at other places.

I am familiar with the wholesale prices of coal transported to Newark over the Lehigh Valley Railroad and its connections at the present time, and during the entire period of my connection with the said coal company. This company has been selling coal at

Newark in competition with other individual and corporation miners of coal, and the wholesale prices at which it has sold coal corresponded and have corresponded substantially with the prices for which coal has been sold at wholesale in Newark by others.

These prices for the six years last past are correctly set forth in the following statement:

Prices of the Lehigh Valley Coal Company for coal at Newark, May–June.

	1887.	1888.	1889.	1890.	1891.	1892.
Average of all sizes above pea	$4.10	$4.33	$4.11	$3.71	$3.72	$4.01
Pea	2.86	2.87	2.71	2.43	2.60	2.70

Prices of the Lehigh Valley Coal Company at Newark for the six months ending May 31, 1892.

	Dec.	Jan.	Feb.	Mar.	Apr.	May.
Above pea	$4.07	$4.08	$3.75	$3.81	$3.87	$4.01
Pea	2.60	2.46	2.45	2.48	2.54	2.70

Prices of the Lehigh Valley Coal Company for different grades of coal for the year ending May 31, 1892.

	July, 1891.	Sept., 1891.	Oct., 1891.	Jan., 1892.	Mar., 1892.	May, 1892.
Lehigh:						
Broken	$4.00	$4.15	$4.15	$4.00	$3.80	$3.85
Egg	4.00	4.15	4.20	4.00	3.90	4.00
Stove	4.05	4.25	4.40	4.00	4.00	4.15
Chestnut	3.80	4.00	4.15	3.75	3.90	4.00
Pea	2.60	2.75	2.75	2.75	2.75	2.75
Wyoming:						
Broken	3.80	3.65	3.75	3.65	3.65	3.75
Egg	3.90	4.00	4.15	3.65	3.75	3.90
Stove	4.05	4.25	4.40	4.00	4.00	4.15
Chestnut	3.80	3.90	4.15	3.50	3.65	3.90
Pea	2.60	2.75	2.75	2.75	2.75	2.75

As is apparent from examination of the above statements, which I have placed in tabulated form for convenience of examination, the fact is that while there has been a slight increase in wholesale prices between May and March, 1892, these prices for May for all sizes above pea are lower than they were in December or January last past and are lower for all sizes than they were in the month of May for three years out of the previous six years.

In making up the above tables, showing the prices for the average of all sizes above pea, I have averaged our Lehigh and Wyoming coals; more than nine-tenths of all coal sold in Newark by the company with which I am connected are embraced in these two classes. Of these two classes, the price of the Lehigh coal has always been somewhat above that of Wyoming. In the last table, showing the prices of broken, egg, stove, chestnut, and pea coal, I have separated these two classes of coal and shown the price for each class.

Our company has also been selling special coals not included in this classification, known as Jeddo, Highland, Hazleton, Buck Mountain, and Blackwood red ash. These special coals have qualities peculiar

to themselves which give them, for certain special purposes, a higher value than ordinary Lehigh, Wyoming, or Schuylkill coals. Altogether, they do not comprise one-tenth of our sales at Newark. There are only two or three breakers for Jeddo coal and about the same number for Highland. The prices of these special coals are largely independent of the general coal market. They are sold, so far as I am aware, only by the company with which I am connected.

CHARLES W. THOMAS.

Sworn to before me this 28th day of June, 1892.

BEN. V. D. FISHER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } ss:

R. T. Davies, being duly sworn, on his oath says: I am and for many years past have been agent for the Lehigh Coal and Navigation Company in the city of New York, and am familiar with the prices at which the coal of said company has been sold in and about the city of New York and in the city of Newark for the past six years. The Lehigh Coal and Navigation Company is the oldest company engaged in mining and selling coal and for the past six years has been mining and selling about 1,250,000 tons a year. Its coal comes from the Lehigh region and usually commands a higher price than any other anthracite coal. It is the coal of this company that is familiarly known by the title of "Old Company's coal."

The following is a correct statement of the prices at which its coal has been bought and sold in Newark during the past six years and fairly represents the average rise and fall of prices at other points in the State of New Jersey where this company sells its coal:

	1887.	1888.	1889.	1890.	1891.	1892.
Broken	$4.05	$4.25	$4.15	$4.05	$4.10	$3.75
Egg	3.80	4.00	3.75	3.75	3.85	3.75
Stove	4.05	4.00	3.90	3.75	4.00	3.75
Chestnut	3.85	4.00	3.75	3.50	3.70	3.50
Pea	2.60	2.60	2.00	2.25	2.25	2.25

RICHARD T. DAVIES.

Sworn to before me this 28th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } ss:

C. S. Hoffman, being duly sworn according to law, on his oath says:

I reside at Somerville, New Jersey, and am and for many years past have been engaged in the business of selling coal, and particu-

larly coal of the Lehigh and Wilkesbarre Coal Company, at different points in the State of New Jersey on the line of the Central Railroad of New Jersey and its branches, and am and for more than six years past continuously have been familiar with the retail price of anthracite coal at points in New Jersey on the line of said railroad.

I was requested by counsel for the Central Railroad Company of New Jersey, a few days before June 14th, to ascertain the retail price of coal at different important points on the Central Railroad on June 1, 1892, and did so. As a result of my general knowledge and with the particular inquiries made by me on or about June 14th, I state that the average retail price of coal to consumers at important points on the line of the Central Railroad on June 1st, 1892, was not above the average price at which coal was bought and sold at retail at such points in February, previous to the execution of the lease by the Central Railroad Company of New Jersey to the Port Reading Railroad Company, and that these prices are not higher than those for which coal has been bought and sold at retail at places on the line of said railroad at many times within the past six years.

The following is a correct statement of the retail prices of egg, nut, and stove at different important points on the line of the Central Railroad and branches during the year 1891, and on June 1st, 1892, and deponent further saith that at Plainfield, Somerville, and Westfield the price was advanced from $5 to $5.25 prior to February 1st, 1892:

Location.	Price during 1891.	Price on or immediately previous to June 1, 1892.
Rockaway, N. J	$5.00	$5.00
Dover, N. J. (egg and nut)	5.25	5.15
Dover, N. J. (stove)	5.25	5.40
Lebanon, N. J	4.50	4.50
Whitehouse, N. J. (nut)	4.50	4.50
Whitehouse, N. J. (stove)	4.75	4.75
Flemington, N. J	5.00	5.00
Bound Brook, N. J	5.15	5.15
Elizabeth, N. J	4.75	4.25
Jersey City, N. J	5.00	5.00
Perth Amboy, N. J	5.00	5.00
Matawan, N. J	5.00	5.00
Point Pleasant, N. J	5.75	5.75
Asbury Park, N. J	5.50	5.50
Long Branch, N. J	5.25	5.25
Eatontown, N. J	4.75	4.75
Vineland, N. J	5.00	5.00
Somerville, N. J	5.00	[a] 5.25
Westfield, N. J	5.00	[a] 5.25
Plainfield, N. J	5.00	[a] 5.25

[a] This advance from the prices of 1891 was made before February 1, 1892.

C. S. HOFFMAN.

Sworn to before me the 27th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } ss:

Frederick W. Paul, being duly sworn, on his oath says:

I reside in the city of Newark, and for more than fifteen years last past have been continuously engaged in the retail coal business in Newark. I have been during that entire period familiar with the retail prices charged to consumers for coal in the city of Newark.

There are in that city a large number of retail coal dealers, obtaining their coal from different individual and corporation miners and by different lines of railroad. Coal is transported into Newark over the lines of the following railroads, viz: The Central Railroad of New Jersey; the Pennsylvania Railroad; the Lehigh Valley Railroad; the New York, Lake Erie and Western Railroad; the Delaware, Lackawanna and Western Railroad; and also reaches Newark by way of the Morris Canal and by water transportation from the tide-water termini of other coal-carrying railroads. The coal reaching Newark by these different lines of transportation comes from different miners, both individuals and corporations, on the lines of these different railroads or their connections in the coal regions.

There has been no change whatsoever in the retail price of coal in Newark during the present year, 1892. The retail price of coal in Newark is not higher at the present time than it has been on the average for the past six years. I have looked over my books for more than six years last past and find the following to have been the retail prices of Lehigh coal in Newark on or about the months named:

October, 1886	$5.25	April, 1889	$5.25
January, 1887	5.25	January, 1890	5.25
September, 1887	5.50	April, 1890	4.75
December, 1887	6.00	November, 1890	5.25
April, 1888	5.50	April, 1891	5.00
October, 1888	5.75	October, 1891	5.25

The price of coal has remained at $5.25 from October, 1891, to the present time, and the last-named figure is the present price. The prices I have given are the prices for Lehigh coal of all domestic sizes, viz, egg, stove, and nut. Other coals from the Wyoming and Schuylkill regions have been selling during the period I have named, and are now selling, at an average of 25 cents less per ton than Lehigh coals.

FREDERICK W. PAUL.

Sworn to before me this 28th day of June, 1891.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } ss:

Marvin Dodd, being duly sworn, on his oath says:

I reside in the town of East Orange, and have been engaged in the retail coal business in Newark for upwards of fifteen years last

past. I am and have been during that period familiar with the prices at which coal has been selling at retail in Newark to consumers. I have read the affidavit of Frederick W. Paul, verified the 28th day of June, 1892, as to the prices of coal in Newark. The same is true in every particular. There has been no rise in the retail price of coal to consumers in Newark during the present year, and the present price is not higher than the average price at which coal has been bought and sold at retail in Newark for the past six years.

MARVIN DODD.

Sworn to before me this 28th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } *ss:*

William V. Toffey, being duly sworn according to law, on his oath saith: That he resides at Jersey City, New Jersey; that he has been engaged in the business of selling coal at retail to consumers in the city of Jersey City, New Jersey, for the past four years, and is familiar with the prices charged to such consumers during that period; that the selling price of coal to the consumer in Jersey City during the present year, 1892, is fully as low, if not lower, than the average price at which coal has been selling at retail in Jersey City for the past four years; that the price charged to consumers for the domestic sizes of Lehigh coal during the present year, 1892, has not exceeded $5 per ton.

WILLIAM V. TOFFEY.

Sworn to before me this 28th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } *ss:*

Allison Dodd, being duly sworn according to law, on his oath saith: That he resides at Bloomfield, New Jersey; that he has been engaged for the past seven years in selling coal and is familiar with the prices charged to consumers for coal in the city of Jersey City, New Jersey; that the selling price of coal to the consumer in Jersey City during the present year, 1892, is fully as low, if not lower, than the average price at which coal has been selling at retail in Jersey City for the past four years; that the price charged to consumers for the domestic sizes of Lehigh coal during the present year, 1892, has not exceeded $5 per ton.

ALLISON DODD.

Sworn to before me this 28th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
County of Union. } ss:

Charles W. Irwin, being duly sworn, on his oath saith: I reside at Elizabeth, N. J., and am and for more than two years past have been engaged in the retail coal business at Elizabeth, and have been familiar with the price of coal during that period. The retail price of coal has not advanced in Elizabeth during the months of January, February, April, and May, both before and after the lease of the Central Railroad of New Jersey to the Port Reading Railroad Company on February 12th. The retail price of coal at Elizabeth is lower now than it has been on the average for the past two years.

CHARLES W. IRWIN.

Sworn and subscribed before me the 27th day of June, 1892.

BEN. V. D. FISHER,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
County of Union. } ss:

James W. Wall, jr., being duly sworn, on his oath saith: I reside at Elizabeth, N. J., and am and for more than fifteen years past have been engaged in the retail coal business at Elizabeth as member of the firm of Wall & Culton, and have been familiar with the price of coal during that period. The retail price of coal has not advanced in Elizabeth during the months of January, February, April, and May, both before and after the lease of the Central Railroad of New Jersey to the Port Reading Railroad Company on February 12th. The retail price of coal at Elizabeth is lower now than it has been on the average for the past six years.

J. W. WALL, Jr.

Sworn to and subscribed before me the 27th day of June, 1892.

BEN V. D. FISHER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } ss:

Sidney S. Thompson, being duly sworn, on his oath saith: I reside at Elizabeth, and am and for more than fifteen years past have been engaged in the retail coal business at Elizabeth as member of the firm of J. & S. S. Thompson, and have been familiar with the price of coal during that period. The retail price of coal has not advanced in Elizabeth during the months January, February, April, and May, both before and after the lease of the Central Railroad of New Jersey to the Port Reading Railroad Company on

February 12th. The retail price of coal at Elizabeth is lower now than it has been on the average for the past six years.

S. S. THOMPSON.

Sworn to and subscribed before me the 27th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } ss:

Paul T. Norton, being duly sworn, on his oath saith: I reside at Elizabeth and am and for more than nine years past have been engaged in the retail coal business at Elizabeth, and have been familiar with the price of coal during that period. The retail price of coal has not advanced in Elizabeth during the months of January, February, April, and May, both before and after the lease of the Central Railroad of New Jersey to the Port Reading Railroad Company on February 12th. The retail price of coal at Elizabeth is lower now than it has been on the average for the past six years.

PAUL T. NORTON.

Sworn to and subscribed before me the 27th day of June, 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW YORK,
City and county of New York. } ss:

W. H. McCormick, being duly sworn, on his oath says: I reside at Perth Amboy, New Jersey, and have been engaged in the retail coal business at that place for upward of ten years. The present price of coal at retail to consumers in Perth Amboy is $5, that being the price for stove, egg, and nut. There has been no increase in the retail price of coal at Perth Amboy during the present year, and present prices are no greater than the prices at which coal has been bought and sold at times during the past six years.

WM. H. MCCORMICK.

Sworn to before me this 27th day of June 1892.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
County of Union. ss:

Edwin Loomis, being duly sworn, on his oath saith: I reside at Palinfield, N. J., and am and for more than two years past have been engaged in the retail coal business at Plainfield as member of the firm

of Loomis & Rice. There has been no increase in the price of coal charged by me or by the firm of which I am a member, or, so far as I know, by any dealer in my town, between any time in the month of February last and the present time, nor is the retail price of coal at Plainfield higher now than it has been on the average for the past two years.

EDWIN LOOMIS.

Sworn to and subscribed before me the 27th day of June, 1892.

BEN. V. D. FISHER,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
County of Union. } *ss:*

Edwin H. Holmes, being duly sworn, on his oath saith: I reside at Plainfield, N. J., and am and for more than three years past have been engaged in the retail coal business at Plainfield, N. J. There has been no increase in the price of coal charged by me, or, so far as I know, by any dealer in my town, between any time in the month of February last and the present time, nor is the retail price of coal at Plainfield, N. J., higher now than it has been on the average for the past three years.

EDWIN H. HOLMES.

Sworn to and subscribed before me the 27th day of June, 1892.

BEN. V. D. FISHER,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
County of Somerset. } *ss:*

Joseph R. Hoffman, being duly sworn, on his oath saith: I reside at Lebanon, N. J., and am and for more than two years past have been engaged in the retail coal business at Lebanon, N. J., as member of the firm of Hoffman & Hildebrandt. There has been no increase in the price of coal charged by me or by the firm of which I am a member, or, so far as I know, by any dealer in my town, between any time in the month of February last and the present time, nor is the retail price of coal at Lebanon, N. J., higher now than it has been on the average for the past two years.

JOSEPH R. HOFFMAN.

Sworn to and subscribed before me the 27th day of June, 1892.

BEN. V. D. FISHER,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
County of Hunterdon. } *ss:*

Stephen K. Large, being duly sworn, on his oath saith: I reside at White House, N. J., and am and for more than fifteen years past have

been engaged in the retail coal business at White House, N. J. There has been no increase in the price of coal charged by me, or, so far as I know, by any dealer in my town, between any time in the month of February last and the present time, nor is the retail price of coal at White House higher now than it has been on the average for the past six years.

S. K. LARGE.

Sworn to and subscribed before me the 27th day of June, 1892.

BEN. V. D. FISHER,
Master in Chancery of New Jersey.

STATE OF NEW JERSEY,
County of Somerset. } *ss:*

Isaac W. Searing, being duly sworn, on his oath saith: I reside at Dover, N. J., and am and for more than six years past have been engaged in the retail coal business at Dover as manager of the Dover Lumber Company.

There has been no increase in the average price of coal charged by me or by the company of which I am a member, or, so far as I know, by any dealer in my town, between June 1, 1891, and June 1, 1892, nor is the retail price of coal at Dover higher now than it has been on the average for the past six years.

ISAAC W. SEARING.

Sworn to and subscribed before me the 28th day of June, 1892.

BEN. V. D. FISHER,
Master in Chancery of New Jersey.

Proofs relating to suit of Alfred Mills et al. v. C. R. R. Co. of N. J.

New Jersey Court of Errors and Appeals, November term, 1886.

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, The Philadelphia and Reading Railroad Company, appellants,
and
ALFRED MILLS AND JOHN H. LIDGERWOOD, surviving executors of the last will and testament of Stephen Vail, deceased, respondents.

On appeal from the Court of Chancery.
Order for severance of appellants and substitution of solicitors.

It appearing to the court that the appeal in the above stated cause was taken by B. Williamson, esq., as solicitor and of counsel with the above named appellants, and that since the taking of such appeal the relations between the above named appellants have changed, and due notice having been given to the solicitor of the above named respond-

ents of the making of this application and order, and now, by and with the consent of the said B. Williamson, solicitor of said appellants, it is, on this eighteenth day of December, A. D. eighteen hundred and eighty-six, ordered, that there be a severance of the appellants in the above stated appeal, and that A. G. Richey & Son be and they are hereby substituted as solicitors and counsel for the said appellant, The Philadelphia and Reading Railroad Company, in the room and place of the said B. Williamson, and that the said appellant, The Philadelphia and Reading Railroad Company, have leave to discontinue the further prosecution of said appeal on their part and behalf without prejudice to the rights of the said appellant. The Central Railroad Company of New Jersey, or the prosecution of said appeal on the part of the last named appellant, with costs to respondents.

On motion of—

A. G. RICHEY & SON,
Solicitors and Counsel of the Phila. & R. R. R. Co.

STATE OF NEW JERSEY,
Department of State.

I, Henry C. Kelsey, secretary of state of the State of New Jersey, and ex-officio clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of an order made by said court in the above stated cause, dated December 18, 1886, as the same is taken from and compared with the minutes of said court.

In testimony whereof I have hereunto set my hand and affixed my official seal at Trenton, this twentieth day of June, 1892.

[SEAL.]

HENRY C. KELSEY,
Secretary of State.

New Jersey Court of Errors and Appeals, November Term, 1886.

Between—

THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, The Philadelphia and Reading Company, appellants,

and

ALFRED MILLS AND JOHN H. LEDGERWOOD, surviving executors of the last will and testament of Stephen Vail, deceased, respondent.

On appeal from the Court of Chancery Order.

It is, on this eighteenth day of December, A. D. eighteen hundred and eighty-six, on motion of A. G. Richey & Son, solicitors and of counsel with the Philadelphia and Reading Railroad Company, one of the appellants in the above stated cause, ordered, that the further

prosecution of the appeal on their part in the above stated cause be, and the same is hereby, discontinued without prejudice to the rights of the Central Railroad Company of New Jersey, the other appellant to the further prosecution of their appeal in said cause.

On motion of—

A. G. RICHEY & SON,
Solicitors for and of Counsel with the Philadelphia and Reading Railroad Company.

STATE OF NEW JERSEY,
Department of State.

I, Henry C. Kelsey, secretary of state of the State of New Jersey, and ex officio clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of an order made by said court in the above stated cause, dated December 18, 1886, as the same is taken from and compared with the minutes of said court.

In testimony whereof I have hereunto set my hand and affixed my official seal at Trenton, this twentieth day of June, A. D. 1892.

[SEAL.]

HENRY C. KELSEY,
Secretary of State.

New Jersey Court of Errors and Appeals.

November Term, 1886.

THE CENTRAL RAILROAD COMPANY OF NEW Jersey and The Philadelphia and Reading Railroad Company, appellants, and ALFRED MILLS AND JOHN N. LIDGERWOOD, surviving executors of Stephen Vail (deceased), respondents.	On appeal from decree in chancery.

"The Philadelphia and Reading Railroad Company," appellants as above, having, by leave of the court, withdrawn their appeal herein, the appellants, "The Central Railroad Company of New Jersey," and the respondents assenting thereto, the same being without prejudice thereby to either of the parties so assenting, and it being now represented to the court that since the decree of the Court of Chancery the rights and interest of the said respondents and of the appellants, "The Central Railroad Company of New Jersey," have so changed that the objects of the suit, to wit, the possession of the roads and property of the Central Railroad Company of New Jersey are about to be obtained by reason of an order of the Circuit Court of the United States for the Eastern District of Pennsylvania, made on

the sixth day of April, 1886; and the said The Central Railroad Company of New Jersey and the respondents having entered iato an agreement to the effect that upon payment of the costs and disbursements of the respondents in prosecuting their suit in chancery and in this court, an order of this court may be made remitting the record to the Court of Chancery with a view to have the said decree of the Court of Chancery opened and the said suit dismissed.

Mr. H. C. Pitney, solicitor and counsel of the respondents, assenting, it is now, on this 18th day of December, 1886, ordered by the court that the said record be remitted to the Court of Chancery to the end that the chancellor may carry out the said agreement of the parties, as herein expressed, and to take such proceedings for that purpose as may be required by the rules and practice of the Court of Chancery.

On motion of—

B. WILLIAMSON,
Sol. of Appellants.

Consented to Dec. 20, 1886.

H. C. PITNEY,
Sol. of Respondents.

STATE OF NEW JERSEY,
Department of State.

I, Henry C. Kelsey, secretary of state of the State New Jersey, and ex officio clerk of the Court of Errors and Appeals in the last resort in all causes, do hereby certify that the foregoing is a true copy of an order made by said court in the above-stated cause, dated December 18, 1886, as the same is taken from and compared with the minutes of said court.

In testimony whereof I have hereunto set my hand and affixed my official seal at Trenton, this twentieth day of June, A. D. 1892.

[SEAL.]

HENRY C. KELSEY,
Secretary of State.

In Chancery of New Jersey.

Between ALFRED MILLS AND JOHN H. LIDGERWOOD, surviving executors of Stephen Vail, deceased, complainants, *and* THE CENTRAL RAILROAD COMPANY OF NEW Jersey and others, defendants.	Decree on remittitur

Upon opening the matter this day to the court by Benjamin Williamson, solicitor and counsel with the Central Railroad Company

of New Jersey, and it appearing that said the Central Railroad Company of New Jersey and the Philadelphia and Reading Railroad Company filed an appeal from a decree made in this cause on the third day of June, 1886, to the Court of Errors and Appeals in the last resort in all causes; and that the said appeal has been disposed of by the said Court of Appeals, and the proceedings have been remitted to this court by the following order made by the said Court of Appeals, to wit:

"'The Philadelphia and Reading Railroad Company,' appellants, as above, having by leave of the court withdrawn their appeal herein (the appellants, 'The Central Railroad Company of New Jersey', and the respondents assenting thereto, the same being without prejudice thereby to either of the parties so consenting), and it being now represented to the court that since the decree of the Court of Chancery the rights and interests of the said respondents and of the appellants, 'The Central Railroad Company of New Jersey,' have so changed that the objects of the suit, to wit, the possession of the roads and property of the Central Railroad Company of New Jersey, are about to be obtained by reason of an order of the Circuit Court of the United States for the Eastern District of Pennsylvania, made on the sixth day of April, 1886; and the said Central Railroad Company of New Jersey and the respondents having entered into an agreement to the effect that upon payment of the costs and disbursements of the respondents in prosecuting its suit in chancery and in this court, an order of this court may be made, remitting the record to the Court of Chancery, with a view to have the said decree of the Court of Chancery opened, and the said suit dismissed.

"Mr. H. C. Pitney, solicitor, and counsel of the respondents assenting, it is now, on this 18th day of December, 1886, ordered by the court that the said record be remitted to the Court of Chancery to the end that the chancellor may carry out the said agreement of the parties as herein expressed and to take such proceedings for that purpose as may be required by the rules and practice of the Court of Chancery.

"It is thereupon, on this 20th day of December, eighteen hundred and eighty-six, on motion as aforesaid, ordered that the decree of the said Court of Appeals be, and the same is hereby, made the decree of this court; and it is further ordered, on motion as aforesaid, that the said decree be, and the same is hereby, opened to the end that the said suit may be dismissed or otherwise proceeded in, according to the practice of this court and the said decree of the Court of Appeals.

"THEODORE RUNYON.

"(A true copy.)
"ALLAN MCDERMOTT,
"Clerk."

Proofs relating to ownership of stock of the Lehigh and Wilkesbarre Coal Company.

In Chancery of New Jersey.

Between
THE LEHIGH COAL AND NAVIGATION COMPANY, COMPLT.,
and
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY,
deft.

ORDER AUTHORIZING RECEIVER AND COMPANY TO JOIN IN AN AGREEMENT FOR RE-ADJUSTMENT, MORTGAGING AMONGST OTHER PROPERTY THE LEHIGH AND WILKESBARRE COAL COMPANY STOCK.

Benjamin Williamson, of counsel of Francis S. Lathrop, the receiver appointed in this cause by this court, having appeared before and presented to the court a proposed agreement for the equitable adjustment of the affairs of the Central Railroad Company of New Jersey, without a foreclosure, embracing the following parties, that is to say:

First. The holders of the bonds of the Lehigh and Wilkesbarre Coal Company.

Second. The holders of the bonds of the American Dock and Improvement Company.

Third. The holders of the convertible and consolidated bonds of the said railroad company, secured by a mortgage made by said company to the New York Guaranty and Indemnity Company.

Fourth. The stockholders of the said Central Railroad Company.

Fifth. The Lehigh and Wilkesbarre Coal Company.

Sixth. The receivers of the last named company.

Seventh. The Lehigh Coal and Navigation Company.

Eighth. The North Pennsylvania Railroad Company and the Delaware and Bound Brook Railroad Company.

Ninth. The Central Railroad Company of New Jersey.

Tenth. The receiver of the last named company, by which said parties interchangeably agree to do and perform all the matters and things by them respectively to be performed as are in each and all the items thereof set forth.

First. By the said proposed agreement the said The Central Railroad Company is to be released from its guaranty upon six millions one hundred and sixteen thousand ($6,116,000) dollars bonds of The Lehigh and Wilkesbarre Coal Company and also from its guaranty of so many of the remaining five millions three hundred and eighty-four thousand ($5,384,000) dollars of said last mentioned bonds as shall be owned by persons signing said agreement, the consideration for which is the giving of a preference and priority as to interest to those owners of the said five millions three hundred and eighty-four thousand ($5,384,000) dollars as shall sign said agreement over the owners of the said six millions one hundred and sixteen thousand

($6,116,000) dollars of said bonds, in the manner particularly specified in the annexed agreement.

* * * * * * *

Third. By the third item of the said agreement the holders of the convertible and consolidated bonds of The Central Railroad Company of New Jersey agree that the coupons thereon which are first payable within two and a half years from and after the date for payment of the coupons which were last payable before the appointment of the said Francis S. Lathrop as receiver aforesaid shall be cancelled on receiving bonds to be issued by the said The Central Railroad Company of New Jersey, payable in twenty-five years, or any time prior thereto, at the option of the said last mentioned railroad company, bearing interest at the rate of seven per cent per annum, payable half yearly; such new bonds and the original bonds from which such coupons are to be taken and cancelled are to be secured by a mortgage, the issue of new bonds under which shall not exceed five millions five hundred and fifty thousand ($5,550,000) dollars on divers properties specified in said third item (among which properties was 132,000 shares of the capital stock of The Lehigh and Wilkesbarre Coal Company of a par value of $6,600,000).

* * * * * * *

Fifth. By the fifth item of the said agreement the Lehigh and Wilkesbarre Coal Company and the receivers thereof, with the requisite permission of the court which appointed them, agree to make and issue the bonds and give the preference to interest on bonds, and in the sinking fund, as provided for in the first item of the agreement, and in all things to perform the conditions and provisions of the said item.

Sixth. By the seventh item of the said agreement, the said Francis S. Lathrop, receiver, as aforesaid, agrees that, with the consent of this court, he will comply with and perform the terms and conditions of the first, second, third, and fourth items of said agreement, and will in all things carry out and perform all the provisions and conditions of said agreement for him to perform, and will apply the money that may accrue by reason of the provisions of said agreement, and the income of the railroads in his charge, so as to discharge the liabilities of the said Central Railroad Company for the said indebtedness of about four millions five hundred thousand ($4,500,000) dollars, or the unpaid balance thereof, while at the same time protecting the rights of the property of those interested in said railroad company as bondholders and as stockholders.

* * * * * * *

And the said counsel having moved that an order be made in the cause permitting and authorizing the said Francis S. Lathrop, as receiver as aforesaid, and the said The Central Railroad Company of New Jersey to each sign the said proposed agreement, and to perform the same so far as the same is by them, respectively, to be performed, and the court being of opinion that the said agreement is in and by its terms and provisions reasonable, equitable, and just,

and conducive to the best interests of all the parties interested in the property, rights, and business of the said railroad company, if executed and carried into effect, and that if it should fail to be sufficiently assented to to be put in course of performance or of complete performance, that no party interested in the said property, rights, and business will be placed in any worse position or condition than he or it now is, it is, on this 2d day of March, 1878, by the chancellor of the said State of New Jersey.

Ordered, That the said Francis S. Lathrop, as receiver as aforesaid, have permission and authority, and permission and authority are hereby given to and vested in him to sign the said agreement, as receiver aforesaid, and to perform the same so far as by the terms thereof, he as receiver as aforesaid can or should perform the same; and for the performance thereof he is hereby authorized to employ and make use of such means and agencies as he may deem suitable and necessary for that purpose.

And it is further ordered, That the injunction ordered in this cause against the said Central Railroad Company of New Jersey by the order therein, bearing date the 14th day of February, 1877, be and the same hereby is so far relaxed and modified as to permit and authorize the said Central Railroad Company of New Jersey to make, duly execute, and deliver the bonds and the mortgage mentioned and provided for in third item of the said proposed agreement, the income bonds mentioned in the fourth item of said proposed agreement, and to perform all other parts of said proposed agreement, which by the terms thereof are to be done or performed by the said The Central Railroad Company of New Jersey, and to do whatever may be necessary to the full and effectual performance.

This order, however, is made without prejudice to the rights of any person interested in the property or the assets of the said Central Railroad Company of New Jersey, as creditor or stockholder, who shall not have signed said agreement, reserving to them the right to apply to this court accordingly.

(Signed) THEODORE RUNYON, *C.*

Proof that the stock of the Lehigh and Wilkesbarre Coal Company came into the possession of the receiver the Court of Chancery.

In Chancery of New Jersey.

Between

THE LEHIGH COAL AND NAVIGATION COMPANY, Complainants,
and
THE CENTRAL RAILROAD COMPANY OF NEW JERSEY, Defendants.

Exhibit A, May 8, 1882. Amzi Dodd, master.

Inventory of all the estate, property, and effects of the Central Railroad Company of New Jersey, of every kind and description,

which came into the possession of Francis S. Lathrop, as receiver, on February 15, 1877, when he entered upon his duties, as nearly as the same could be ascertained.

* * * * * * *

SCHEDULE 1.

CASH SECURITIES AND ACCOUNTS RECEIVABLE, &C.

The values affixed to the following named securities and accounts receivable are those at which such securities or accounts stand upon the books of the company, and are here inserted, not for the purpose of fixing the value thereof, but for the purpose of connecting this inventory with the said books.

* * * * * * *

6,116 Lehigh and Wilkesbarre consolidated bonds	$5,842,183.75
Stock of the Lehigh and Wilkesbarre Coal Company, par value $6,649,250	5,789,038.26

Proof that the stock of the Lehigh and Wilkesbarre Coal Company was delivered back by the receivers to the company by decree of court.

In Chancery of New Jersey.

Between
THE LEHIGH COAL AND NAVIGATION COMPANY, complainant,
and
THE CENTRAL RAILROAD COMPANY OF NEW Jersey, defendant.

DECREE FOR DISSOLUTION OF INJUNCTION, SURRENDERING PROPERTY, &C.

On reading the report of Joseph D. Bedle, special master, made the sixteenth day of May, eighteen hundred and eighty-three, in pursuance of an order of reference bearing date the fourth day of May, eighteen hundred and eighty-three, in the above cause, on the petition of the Central Railroad Company of New Jersey to dissolve the injunction issued on the fourteenth day of February, eighteen hundred and seventy-seven, and to direct Henry S. Little, the receiver, to surrender and deliver up into the possession, management, and control of the said company all the property of whatever kind or description now in his possession as receiver, the facts stated in the said petition being admitted in writing to be true by the receiver.

* * * * * * *

It is, on this nineteenth day of May, in the year eighteen hundred and eighty-three, by the chancellor ordered, adjudged, and decreed that the said report of the master be confirmed in all things, and that

the receiver do surrender, transfer, and deliver over to the Central Railroad Company of New Jersey all the property, of whatever kind or description it may be, now in the possession or control of the receiver, except certain unencumbered assets amounting nominally to four million nine hundred and eighty-seven thousand two hundred and three dollars and twelve cents, referred to in the master's report, and the particulars of which appear in Exhibit 2.

This property included all the stock of the Lehigh and Wilkesbarre Coal Company which had come into possession of the receiver and which stood upon the books of the company at $5,789,088.26, as appears by Exhibit 3, annexed to the report of J. D. Bedle, master.

Proof of execution by the authority of the United States Circuit Court of the general mortgage of July 1, 1887, which included the stock of the coal company.

In the Circuit Court of the United States for the district of New Jersey.

JOHN S. KENNEDY ET AL.
vs.
THE CENTRAL RAILROAD OF NEW JERSEY.

The petition of the Central Railroad Company of New Jersey, corporation defendant, respectfully represents:

First. That at the request of the representatives of the holders of a majority of the indebtedness of the corporation a committee was appointed to prepare and submit a plan for the reorganization of the company, and after a careful examination of its affairs and property the board of directors and the reorganization committee have prepared a plan for the readjustment of its affairs which has received the approval and recommendation of the receivers heretofore appointed in the cause, and having been submitted to the creditors and stockholders has already been approved by them to such extent as to warrant the belief that the same can be carried into successful execution.

A copy of the plan of the reorganization committee and of the proposition made by the corporation defendant to its stockholders and certain of its creditors is herewith submitted, marked "Exhibit A."

Second. And your petitioner further shows that by reference to the said plan it will appear that it contemplates the issue of $50,000,000 one-hundred-year gold bonds, bearing interest at such rates as may be fixed at the period of issue from time to time, not exceeding 5 per cent per annum, with coupons attached payable semiannually and when registered, interest payable quarterly, to be secured by a general mortgage covering all the property of the company, including

all the securities representing control of the necessary constituent companies and all equipment now subject to special car trust liens.

Third. Your petitioner further shows that by the original order of October 15, 1886, an injunction was issued against the defendants and the persons claiming to act by, through, or under them, and all other persons, to restrain them from taking possession and managing said property, with leave to any party in interest to apply for further directions.

Your petitioner therefore prays that the said injunction may be so far relaxed as to permit the corporation defendant, at the discretion of its board of directors, to exercise its corporate powers and franchises, for the purpose of making, executing, and delivering the proposed mortgage, and of creating, issuing, and disposing of so many of the said bonds as may be necessary for carrying the said plan into effect by the taking up or providing for all of the overdue obligations of the company defendant.

And your petitioner will ever pray.

CENTRAL R. R. CO. OF NEW JERSEY,
J. R. MAXWELL, *Pt.*

B. WILLIAMSON,
Sol. & Counsel of Petitioners.

STATE OF NEW YORK,
City and County of New York } *ss:*

J. Rogers Maxwell, being duly sworn, says: I am the president of the Central Railroad Company of New Jersey, and have read the foregoing petition, and the facts therein stated, of my own knowledge, are true, and so far as they are stated upon the information of others I believe them to be true.

J. R. MAXWELL.

Sworn and subscribed to before me this thirteenth day of June, A. D. 1887.

JOHN L. CONOVER,
Master in Chancery of New Jersey.

In the Circuit Court of the United States for the District of New New Jersey.

JOHN S. KENNEDY ET AL.
vs.
THE CENTRAL RAILROAD OF NEW JERSEY.

And now, June 15, 1887, upon consideration of the petition of the Central Railroad Company of New Jersey this day filed, it is ordered and decreed that the injunction heretofore issued by the order of October 15, 1886, be, and the same is hereby, so far relaxed as to

permit the said corporation defendant, at the discretion of its board of directors, to exercise its corporate powers and franchises for the purpose of making, executing, and delivering a general mortgage covering all the property of the company, including all the securities representing the control of its necessary constituent companies, and all equipment, including that now subject to special car trust liens for the purpose of securing the proposed issue of $50,000,000 one hundred year gold bonds, and to sell, deliver, and to exchange such of the said bonds as may be necessary for the purpose of carrying the said plan into operation.

It is further ordered that the exchange of the new bonds for old securities and the application of the proceeds of the bonds sold shall be made by the receivers appointed in this cause.

W. McKENNAN, *Cir. Judge.*

A true copy.

[SEAL.] S. D. OLIPHANT, *Clerk.*

Extract from adjustment mortgage, dated May 1, 1878, executed by the Central Railroad Company of New Jersey to John S. Kennedy, John Edgar Johnson, and Jacob D. Vermilye, trustees, comprising description of the stock of the Lehigh and Wilkesbarre Coal Company, as included in said mortgage.

"Seventh. One hundred and thirty-two thousand shares of the capital stock of the said Lehigh and Wilkesbarre Coal Company of the par value of fifty dollars each, amounting in the aggregate, at par, to six millions six hundred thousand dollars, now belonging to said party of the first part."

Extract from general mortgage, dated July 1, 1887, executed by the Central Railroad Company of New Jersey to the Central Trust Company of New York, trustee, comprising description of the stock of the Lehigh and Wilkesbarre Coal Company, as included in said mortgage.

"Seventh. One hundred and thirty-two thousand shares of the capital stock of the said Lehigh and Wilkesbarre Coal Company of the par value of fifty dollars each, amounting in the aggregate, at par, to six millions six hundred thousand dollars, now belonging to the railroad company."

By Judge CAMPBELL:

Q. In the cross-examination of Mr. Baer on Monday afternoon, toward the close of the session, there was introduced in evidence a portion of the answer of the Central Railroad Company of New Jersey in the so-called commodities case at the suit of the United States. State whether in that connection you were solicitor and

counsel for the Central Railroad Company of New Jersey in the preparation and filing of the pleadings in that case as well as counsel for other defendants in other cases arising under the commodities clause of the so-called Hepburn Act?

(The Government objects to the introduction of any evidence on this subject. The time for the taking of testimony by the defendants has expired and counsel for the Government agreed with counsel for the Reading Company that the evidence of Mr. Baer might be taken notwithstanding the expiration of the time, but they have not assented that the matter may be prolonged by explanations of Mr. Baer's testimony, and they must regretfully object to such extension. Furthermore, the Government has not introduced any part of the answer of the Central Railroad Company of New Jersey in the commodities clause case as an admission by that company. It was presented to Mr. Baer and he was asked to state whether the facts therein set out were correct, and he replied he thought that the statement was a fair one of existing conditions as at the time of his examination he understood them. In addition, the questions and matters about to be inquired about are not relevant cross-examination to anything for which this witness was introduced.

Counsel for the Reading companies reply that the evidence now offered is in explanation of testimony introduced by the government counsel on cross-examination of the witness, which related to nothing whatsoever concerning which the witness had been examined in chief, and that in any event the testimony now offered by this witness is necessary and proper sur-rebuttal testimony, which is not governed by the rule of the court in respect of the closing testimony, or the agreement of counsel, to which counsel for the Government has alluded.)

A. I was counsel for the Central Railroad Company of New Jersey in the commodities case for the purposes indicated in your question, and I was also in association with Mr. John G. Johnson, counsel for the railroad companies defendants in the other cases which together had been grouped as the commodities cases, and were argued both in the circuit and the supreme courts.

Q. State whether the form and substance of the mutual altercations of the parties to those litigations which comprised the pleadings therein, had been the subject of conference between yourself and the the Attorney-General of the United States and his special assistants?—A. Yes, sir.

Q. State whether or not it is true that those mutual allegations, demands, and so forth, and so forth, were devised by the counsel for the Government and the defendants for the purpose of speeding and expediting the cause and avoiding the necessity for taking strict proofs?—A. This is true; I drew the answer of the Central Railroad Company of New Jersey in such form as to all matters of fact that I expected and hoped that it would be taken for purposes of that litigation for the Attorney-General in order to raise the questions of law, and it was so taken.

Q. State whether in connection with these pleadings there was an understanding between yourself and the Attorney-General and his assistants that these allegations in the forms presented for the purpose of raising the issues under the act of Congress were not to be used by or for the Government of the United States in any other litigation.—A. There was a stipulation entered into, as I remember, at the instance of the Attorney-General, in all these suits, providing that the allegations of the pleadings should be deemed true and taken only for the purposes of those suits. That stipulation is in writing.

Q. Will you kindly produce that stipulation and hand it to the examiner, to be placed upon the record in connection with your testimony, and at the same time supply the counsel for the Government with a copy?—A. I will.

(It is understood that the foregoing objection by the Government to this line of testimony shall be understood as applying to each question and answer.)

The statement produced by the witness is as follows:

"In the Circuit Court of the United States for the Eastern District of Pennsylvania.

"IN EQUITY.

"April Sessions, 1909. No. 87.

"UNITED STATES OF AMERICA, COMPLAINANT,
"*vs.*
"ERIE RAILROAD COMPANY, DEFENDANT.

"It is stipulated and agreed between counsel in the above cause that its submission on bill and answer and any averment or admission in the pleading of either party contained shall in nowise prejudice the said parties in any other suit or proceeding heretofore or hereafter instituted, and shall be operative and take effect only with respect to the present suit and for the purposes thereof.

"CHARLES J. BONAPARTE,
"*Attorney-General.*
"JOHN G. JOHNSON,
"*Atty. for Deft.*
"ROBERT W. DE FOREST,
"*Atty. for Defts.*"

"Same stipulation filed in 85–89–91–95–97."

GEORGE N. WILSON, heretofore sworn, was examined as follows:

Direct examination by Mr. TODD:

Q. You were asked to produce a statement showing the circular or quoted prices of Lehigh Valley Coal Company for prepared sizes of anthracite coal, with all discounts off, at Buffalo, f. o. b. vessel,

monthly from January 1st, 1898, to January 1st, 1909, and at Perth Amboy, f. o. b. vessel, in each month from January 1st, 1898, to January 1st, 1900. Have you such statements with you?—A. I have had prepared a statement giving the information asked for at Buffalo, prices f. o. b. vessel, 1898 to 1908, inclusive. The prices f. o. b. Perth Amboy for the period required we are unable to give because the records back in that period are not available as to the circular prices.

(Statement produced by the witness offered in evidence and marked "Government Exhibit No. 192.")

Q. You mean the records containing the Perth Amboy prices are lost?—A. Yes, sir.

Q. You were asked to produce a statement showing as of what dates the sixty-five per cent contracts made by the Lehigh Valley Coal Company took effect?—A. I have prepared a statement giving that information, which is as follows:

THE LEHIGH VALLEY COAL COMPANY.

Contracts covering purchase of coal on 65 per cent basis.

Operator.	Colliery.	Date.
Austin Coal Company	Austin	March 26th, 1901.
Lentz & Company	Park No. 2	June 24th, 1901.
Midvalley Coal Company	Midvalley No. 2	Do.
A. Pardee & Company	Cranberry	July 9th, 1901.
Do	E. Crystal Ridge	Do.
Temple Iron Company	Forty Fort	September 20th, 1901.
Do	Harry E	Do.
Do	Mt. Lookout	Do.
Raub Coal Company	Louise	May 1st, 1902.
Coxe Bros. & Co., Inc	Beaver Meadow	March 21st, 1906.
Do	Deringer	Do.
Do	Oneida	Do.
Do	Drifton	Do.
Do	Eckley	Do.
Do	Tomhicken	Do.
Evans Colliery Company	Evans	April 3rd, 1908.
W. H. McCauley	Crescent	May 23rd, 1908.
A. Wolf	Wolf	June 7th, 1909.

Assigned by Coxe Bros. to the L. V. Coal Co. March 21, 1906, expired July 1, 1909.

Pardee Bros. & Co., Inc	Lattimer	January 31st, 1903.
Harwood Coal Company	Harwood	Do.

Property purchased by the L. V. Coal Co. July 1, 1905.

Connell Coal Company	William A	May 31st, 1901.
Do	Lawrence	Do.
Seneca Coal Company	Seneca	Do.
Do	Sioux	Do.
Righter Coal Company	Mt. Carmel	April 1st, 1902.
Warrior Run Mining Company	Warrior Run	July 1st, 1904.

Q. Two contracts, one with Pardee Brothers and Company and the other with the Harwood Coal Company, were assigned to the Lehigh Valley Coal Company by Coxe Brothers and Company. Are they still in effect?—A. They are not.

Q. When did they expire?—A. July 1st, 1909.

Q. At one time the Lehigh Valley Coal Company had sixty-five per cent contracts with the Connell Coal Company covering the William A and Lawrence collieries, with the Seneca Coal Company covering the Seneca and Sioux collieries, with the Righter Coal Company covering the Mt. Carmel colliery, and with the Warrior Run Mining Company covering the Warrior Run colliery. Those contracts, as I understand, were cancelled at the time the Lehigh Valley Coal Company purchased the stock of those companies?—A. Yes, sir. That is, they became inoperative. The Lehigh Valley Coal Company having purchased those companies those properties became merged in the general operations of the Lehigh Valley Coal Company.

Q. Those companies were merged in the Lehigh Valley Coal Company?—A. Yes, sir.

Q. You were asked to produce a statement from the books of the Lehigh Valley Railroad Company, showing for the calendar years 1900 and 1907, the anthracite tonnage transported by that railroad to all points and to New York harbor f. o. b. vessel, and the portions in each instance shipped by or for the account of the Lehigh Valley Coal Company, whether produced, purchased, or otherwise acquired by it, including therein the output shipped from the collieries of G. B. Markle & Company.—A. I have prepared such a statement. It is as follows:

LEHIGH VALLEY RAILROAD COMPANY.

Statement showing for the calendar years 1900 and 1907 the anthracite tonnage (gross tons) transported by Lehigh Valley Railroad to all points and to New York Harbor f. o. b. vessel, and the portion in each instance shipped by or for account of Lehigh Valley Coal Company, including that shipped from the collieries of G. B. Markle & Company.

	Calendar year 1900.	Calendar year 1907.
Transported to all points:		
Account L. V. Coal Co., as above	4,781,738	9,332,041
All other shipments originating on L. V. R. R	2,620,041	2,582,156
Total	7,401,779	11,914,197
Transported to New York Harbor f. o. b. vessel (included in the foregoing figures):		
Account L. V. Coal Co., as above	1,320,908	2,111,227
All other shipments originating on L. V. R. R	642,451	300,791
Total	1,963,359	2,412,018

Q. You were also asked to produce a statement from the books of the Lehigh Valley Railroad Company showing for the fiscal years ending June 30th, 1907 and 1908, its anthracite coal tonnage, long tons, and gross revenue therefrom, its bituminous coal and coke tonnage, long tons, and gross revenue therefrom, and its general merchandise, net tons, and the gross revenue therefrom. Have you that statement?—A. I have prepared such a statement. It is as follows.

LEHIGH VALLEY RAILROAD COMPANY.

Statement showing, for the fiscal years ended June 30, 1907 and 1908, the anthracite coal tonnage (gross tons) and gross revenue therefrom, bituminous coal and coke tonnage (gross tons) and gross revenue therefrom, and general merchandise (net tons) and gross revenue therefrom.

	1907.		1908.	
	Tons.	Revenue.	Tons.	Revenue.
Anthracite coal	10,598,830	$13,839,602.99	11,206,774	14,908,923.08
Bituminous coal and coke	2,235,291	1,271,296.39	1,759,530	1,266,356.86
Other freight	13,779,764	14,996,672.62	11,957,899	14,011,301.78
Total		30,107,572.00		30,186,581.72

Q. You were asked to produce a statement from the books of the Lehigh Valley Railroad Company showing the average distances it hauled its anthracite tonnage and all other freight tonnage, respectively, and its gross revenue per net ton per mile from the transportation of anthracite coal, and from all other freight, respectively, for the fiscal year ending June 30, 1908. Have you that statement?—A. I have. It is as follows:

LEHIGH VALLEY RAILROAD COMPANY.

Statement showing the average distances it hauled its anthracite tonnage and all other freight tonnage, respectively, and gross revenue per net ton per mile from the transportation of anthracite coal and from all other freight, respectively, for the fiscal year ended June 30, 1908.

Anthracite coal:		
Average distance hauled	miles	161.22
Revenue per net ton per mile	cent	.737
All other freight:		
Average distance hauled	miles	198.98
Revenue per net ton per mile	cent	.551

Q. Please furnish for the calendar years 1900 and 1907 the portion of anthracite coal tonnage reported to the Bureau of Anthracite Coal Statistics as originating on the Lehigh Valley Railroad Company which was shipped by the Lehigh Valley Coal Company, whether produced, purchased, or otherwise acquired by it, including therein the output shipped from the collieries of G. B. Markle & Co.—A. We can give you this figure for the year 1907 from records which we have here present. I do not think we can furnish it for the year 1900. We will look it up if you wish us to. In any event, the difference between the anthracite tonnage originating on the Lehigh Valley road and its total anthracite tonnage as given above is a very insignificant amount. For the year 1907 the total amount of anthracite coal received from connecting roads and other carriers was only 145,166 tons, whereas the coal originating on the Lehigh Valley Railroad was 11,725,524 tons. For the following year, 1908, it was only 76,984 tons of foreign, and for anthracite originating on the Lehigh Valley it was 12,474,603 tons.

These figures I have taken from the interstate-commerce reports.

Cross-examination by Mr. PLATT:

Q. Have you prepared a statement showing the statistics of revenue and tonnage of anthracite coal on the Lehigh Valley road for the year ending June 30th, 1908?—A. I have. It is as follows:

LEHIGH VALLEY RAILROAD COMPANY.

Year ended June 30, 1908.

Anthracite coal.

Gross revenue	$14,908,923.08
Gross tons	11,206,774
Net tons	12,551,587
Average rate per gross ton	$1.2411
Average rate per net ton	$1.1081
Average mileage	161.2
Gross tons one mile	1,806,696,609
Net tons one mile	2,023,500,202
Earnings per gross ton per mile	.00825
Earnings per net ton per mile	.00737

Q. Have you also prepared a similar statement of bituminous coal?—A. I have. It is as follows:

LEHIGH VALLEY RAILROAD COMPANY.

Year ended June 30, 1908.

Bituminous coal.

Gross revenue	$1,266,356.86
Gross tons	1,758,575
Net tons	1,970,675
Average rate per gross ton	$0.7197
Average rate per net ton	$0.6426
Average mileage	100.2
Gross tons one mile	177,181,768
Net tons one mile	198,451,581
Earnings per gross ton per mile	$0.00715
Earnings per net ton per mile	$0.00638

Q. Have you also prepared a similar statement of all other freight?—A. I have. It is as follows:

LEHIGH VALLEY RAILROAD COMPANY.

Year ended June 30, 1908.

Miscellaneous freight.

Gross revenue	$14,011,301.78
Gross tons	10,623,124
Net tons	11,957,899
Average rate per gross ton	$1.3123
Average rate per net ton	$1.1717
Average mileage	215.18
Gross tons one mile	2,297,397,970
Net tons one mile	2,573,085,734
Earnings per gross ton per mile	$0.00610
Earnings per net ton per mile	$0.00545

Q. This statement of bituminous coal includes coke also, does it not?—A. Yes, sir.

Q. This bituminous coal statement that you prepared is in gross and net tons; is it?—A. Yes, sir.

Q. Will you state what the proportions are of bituminous coal and coke in tons?—A. Bituminous coal, 1,710,224 tons; coke, 260,453 tons.

At 1.05 o'clock p. m. a recess was taken until 2.15 o'clock p. m.

2.15 P. M.

Present: The Examiner; and Messrs. McReynolds, Todd, Moot, Campbell, and Platt, counsel.

Mr. GEORGE ZIEGLER, comptroller of the Philadelphia and Reading Railway Company, was subpœnaed to produce certain statements taken from the books and records of his company. He was excused from attending in person, the solicitor of his company producing his responses.

It is agreed that these responses may be read in evidence as if testified to by Mr. Ziegler, subject to objection as to their materiality, relevancy, or competency as to substance, but not as to the form of proof.

First. He was directed to produce a statement of the published rates of the Philadelphia and Reading Railroad Company and its successors for the transportation of each size of anthracite from the mines to Philadelphia and Port Richmond f. o. b. vessel for the period January 1st, 1892, to date, and to New York Harbor f. o. b. vessel for the period from January 1st, 1892, to September 7th, 1896, showing the deductions, if any, for barge service and discharging, to which his response is:

RATES TO PHILADELPHIA AND PORT RICHMOND FROM JANUARY 1ST, 1892, TO DATE.

Coal Tariff No. 13 A (of 1889).

From the best information obtainable, it appears that Coal Tariff No. 13 A took effect April 15th, 1889, remained in effect until September 12th, 1892, and was, therefore, in effect on January 1st, 1892, the date mentioned on the subpœna. This tariff named local rates to "Philadelphia, track and wharf delivery," and "Pt. Richmond," as follows:

From collieries shipping via Schuylkill Haven and Tamaqua:

Prepared sizes	$1.70
Pea coal	1.40
Buckwheat and culm	1.25

The tariff also provided that an additional charge of 15 cents per ton would be made upon coal consigned from collieries shipping via Pine Grove, excepting buckwheat and culm.

Neither this tariff, nor any supplement thereto, provided for an allowance on coal shipped over Pt. Richmond piers. (See copy of attached letter to D. Jones marked "Appendix No. 6.")

Coal tariff 117A of 1892.

The above-mentioned tariff does not indicate that it supersedes 13A (of 1889), but such is understood to be the case. This tariff became effective September 12th, 1892, and included in it are the following rates: To "Philadelphia, track and wharf delivery," and "Pt. Richmond."

From collieries shipping via Schuylkill Haven and Tamaqua:

Prepared sizes	$1.80
Pea coal	1.50
Buckwheat and culm	1.35

From collieries shipping via Pine Grove:

Prepared sizes	$1.95
Pea coal	1.65
Buckwheat and culm	1.35

Neither this tariff, nor any supplement thereto, provided for an allowance on coal shipped over Pt. Richmond piers.

This tariff remained in effect until January 12th, 1893.

Coal tariff 150A of 1893.

[Superseding coal tariff 117A of 1892, and supplement thereto.]

This tariff became effective January 12th, 1893, and included in the tariff are the following rates: To "Philadelphia, track and wharf delivery" and "Pt. Richmond."

From collieries shipping via Schuylkill Haven and Tamaqua:

Prepared sizes	$1.75
Pea coal	1.45
Buckwheat and culm	1.30

From collieries shipping via Pine Grove:

Prepared sizes	$1.90
Pea coal	1.60
Buckwheat and culm	1.30

Neither this tariff, nor any supplement thereto, provided for an allowance on coal shipped over Pt. Richmond piers.

This tariff remained in effect until April 1st, 1893.

Coal tariff 166A of 1893.

[Superseding coal tariff 150A of 1893, and supplement thereto.]

This tariff became effective April 1st, 1893, and included in the tariff are the following rates: To "Philadelphia, track and wharf delivery" and "Pt. Richmond."

From collieries shipping via Schuylkill Haven and Tamaqua:

Prepared sizes	$1.70
Pea coal	1.40
Smaller sizes	1.25

From collieries shipping via Pine Grove:

Prepared sizes	$1.85
Pea coal	1.55
Smaller sizes	1.25

Neither this tariff, nor any supplement thereto, provided for an allowance on coal shipped over Pt. Richmond piers.

This tariff remained in effect until December 4th, 1896.

Coal tariff No. 1A of 1896.

[Superseding P. & R. R. R. coal tariff No. 166A of 1893, and supplements.]

This tariff became effective December 4th, 1896, and included in the tariff are the following rates: To "Philadelphia, track and harbor delivery," and "Pt. Richmond."

From collieries shipping via Schuylkill Haven and Tamaqua:

Prepared sizes	$1.70
Pea coal	1.40
Smaller sizes	1.25

From collieries shipping via Pine Grove:

Prepared sizes	$1.85
Pea coal	1.55
Smaller sizes	1.25

At the time this tariff was issued it did not provide for any allowance on coal transshiped over Pt. Richmond piers into vessels, but there was a supplement issued applying to such shipments while the tariff remained in effect, i. e., Supplement No. 4 to this tariff was issued effective December 23rd, 1901, of which copy is attached hereto and marked Appendix No. 1. It will be noted that this supplement only provides for f. o. b. rates on shipments destined to points beyond the Capes of the Delaware. No supplement was issued providing for f. o. b. rates on shipments destined to points within the Capes.

This tariff remained in effect until January 1st, 1904.

Coal tariff No. 177A of 1904.

[Superseding coal tariff No. 1A of 1896, and supplements.]

This tariff became effective January 1st, 1904, and included in the tariff are the following rates: To "Philadelphia, track and harbor delivery," and "Pt. Richmond."

From collieries in Shamokin, Mahanoy, Schuylkill, and Lorberry districts:

Prepared sizes	$1.70
Pea coal	1.40
Smaller sizes	1.25

From collieries in Lykens Valley district:

Prepared sizes	$1.85
Pea coal	1.55
Smaller sizes	1.25

At the same time, i. e., taking effect January 1st, 1904, there was issued to the tariff a tide-water supplement, copy of which is attached hereto and marked Appendix No. 2. It will be noted that this supplement only provides for f. o. b. rates on shipments destined to points beyond the Capes of the Delaware. No supplement was issued providing for f. o. b. rates on shipments destined to points within the Capes.

Subsequently, i. e., taking effect October 1st, 1906, Supplement No. 1 was issued to this tariff, applying the same rates from collieries in the Lykens Valley district as applied from collieries in the Shamokin, Mahanoy, Schuylkill, and Lorberry districts. This supplement, of course, also had the effect of correspondingly reducing the rates from collieries in the Lykens Valley district on shipments to f. o. b. vessels, Pt. Richmond.

This tariff remained in effect until February 1st, 1907, excepting that effective August 27th, 1906, there was issued coal tariffs 200A and 204A, of 1906, which provided for f. o. b. rates to Pt. Richmond on shipments destined to points within the Capes of the Delaware and to points beyond the Capes of the Delaware, respectively.

Coal tariff No. 200A of 1906.

[I. C. C. No. A-231.]

Names rates to Pt. Richmond, Philadelphia, for reshipment by water to points inside the Capes of the Delaware. Copy of this tariff is attached hereto and marked "Appendix No. 3."

This tariff remained in effect until April 8th, 1909.

Coal tariff No. 204A of 1906.

[I. C. C. No. A-235.]

Names rates to Pt. Richmond, Philadelphia, for reshipment by water to points beyond the Capes of the Delaware. Copy of this tariff is attached hereto and marked "Appendix No. 4."

This tariff is still in effect.

It will be noted that while tariffs 200A and 204A modified the Tidewater Supplement, issued in connection with coal tariff No. 177A, above described, they did not so indicate on the face of these two tariffs (Nos. 200A and 204A), having been the first tariffs naming rates to Pt. Richmond that were filed with the Interstate Commerce Commission.

Coal tariff No. 198 of 1907.

[Superseding coal tariff No. 177A of 1904, and supplement.]

This tariff became effective February 1st, 1907, and included in it are rates to Philadelphia and Pt. Richmond local:

From collieries in Shamokin, Mahanoy, Schuylkill, Lorberry, and Lykens Valley districts:

Prepared sizes	$1.70
Pea coal	1.40
Smaller sizes	1.25

This is a strictly local tariff and was not filed with the Interstate Commerce Commission, and no mention was made in it of f. o. b. rates to Pt. Richmond for the reason that such rates were already in effect, as per tariffs 200A and 204A, above referred to.

This tariff remained in effect until June 17th, 1907.

Coal tariff 245A of 1907.

[Superseding coal tariff No. 198A of 1907, and supplement.]

This tariff became effective June 17th, 1907, and included in it are rates to Philadelphia and Pt. Richmond local.

From collieries in Shamokin, Mahanoy, Schuylkill, Lorberry, and Lykens Valley districts:

Prepared sizes	$1.70
Pea coal	1.40
Smaller sizes	1.25

This is a strictly local tariff and was not filed with the Interstate Commerce Commission, and no mention was made in it of f. o. b. rates to Pt. Richmond for the reason that such rates were already in effect, as per tariffs 200A and 204A, above referred to.

This tariff is still in effect.

Coal tariff No. 286A of 1909.

[I. C. C. No. A–324.]

[Cancels coal tariff No. 200A of 1906.]

This tariff names rates to Pt. Richmond, Philadelphia, for reshipment by water to points inside the Capes of the Delaware, and copy of the same is attached hereto and marked Appendix No. 5.

This tariff is still in effect.

APPENDIX No. 1.

PHILADELPHIA & READING RAILWAY CO.

Coal Freight Department.

SUPPLEMENT No. 4 TO COAL TARIFF No. 1A OF 1896.

Rates in cents per ton (2,240 pounds) on

ANTHRACITE COAL,

in cargo lots reshipped into vessel at Port Richmond, Philadelphia,

From Collieries in Shamokin, Mahanoy, Schuylkill, Lorberry, and Lykens Valley Districts.

Taking effect December 23d, 1901.

The rates of rail transportation which have been applied upon anthracite coal transshipped into water craft at Port Richmond, Philadelphia, and *destined to points beyond the Capes of the Delaware*, will, upon presentation of executed bill of lading, be subject to such adjustment as will reduce the same to the following net rates from the mines to f. o. b. vessels:

To—	From collieries shipping via—							
	Schuylkill Haven and Tamaqua.				Pine Grove.			
	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
Port Richmond, Philadelphia, f. o. b. vessels	130	115	100	90	145	115	100	90

Subject to Change Without Notice.

B. H. BAIL,
G. F. A., P. & R. Ry.,
Philadelphia, Pa.

JOHN H. JONES,
C. F. A., P. & R. Ry.,
Philadelphia, Pa.

Reading Terminal, Philadelphia, December 17th, 1901—250.

APPENDIX No. 2.

PHILADELPHIA & READING RAILWAY COMPANY.

Coal Freight Department.

TIDE-WATER SUPPLEMENT TO COAL TARIFF No. 177A OF 1904.

Rates, in cents, per ton (2,240 pounds) on

ANTHRACITE COAL

In cargo lots reshipped into vessels at Port Richmond, Philadelphia,

From collieries in Shamokin, Mahanoy, Schuylkill, Lorberry, and Lykens Valley districts.

Taking effect January 1st, 1904.

The rates of rail transportation which have been applied upon anthracite coal transshipped into water craft at Port Richmond, Philadelphia, and *destined to points beyond the capes of the Delaware* will, upon presentation of executed bill of lading, be subject to such adjustment as will reduce the same to the following net rates from the mines to f. o. b. vessels:

To—	From collieries in Shamokin, Mahanoy, Schuylkill, and Lorberry districts.				From collieries in Lykens Valley district.			
	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
Port Richmond, Philadelphia, f. o. b. vessels	130	115	100	90	145	115	100	90

Subject to Change Without Notice.

B. H. BAIL,
G. F. A., P. & R. Ry.,
Philadelphia, Pa.

JOHN H. JONES,
C. F. A., P. & R. Ry.,
Philadelphia, Pa.

Reading Terminal, Philadelphia, December 28th, 1903—300.

APPENDIX No. 3.

I. C. C. No. A 231. New Rates.

Interstate.

PHILADELPHIA & READING RAILWAY COMPANY.

Coal Freight Department.

COAL TARIFF No. 200 A OF 1906.

Rates in cents per ton (2,240 pounds) on

ANTHRACITE COAL

In cargo lots reshipped into vessels at Port Richmond, Pa.

From collieries in Shamokin, Mahanoy, Schuylkill, Lorberry, and Lykens Valley Districts.

(See Geographical and Alphabetical List of Collieries I. C. C. No. A 19.)

Taking effect August 27, 1906.

To—	Rate.			
	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
Port Richmond (Philadelphia, Pa.) for reshipment by water	†70	140	125	125

On anthracite coal shipped over Port Richmond piers an allowance of 30 cents per gross ton for boat freight and discharging will be made when the coal is destined to points in Philadelphia Harbor or points inside the Capes of the Delaware.

Above rates apply on date coal is transshipped into vessels without regard to time of passing P. & R. Ry. Company's scales.

Subject to change without notice, except such as is required under the Interstate Commerce law.

JOHN H. JONES,
Coal Freight Agent, P. & R. Ry.
Philadelphia, Pa.

Reading Terminal, Philadelphia, August 23, 1906—300.

APPENDIX No. 4.

I. C. C. No. A 235. New Rates.

Interstate.

PHILADELPHIA & READING RAILWAY CO.

Coal Freight Department.

COAL TARIFF No. 204 A OF 1906.

Rates in cents per ton (2,240 pounds) on

ANTHRACITE COAL

In cargo lots reshipped into vessels at Port Richmond, Pa., from collieries in Shamokin, Mahanoy, Schuylkill, Lorberry, and Lykens Valley Districts.

(See Geographical and Alphabetical List of Collieries, I. C. C. No. A 19.)

Taking effect August 27, 1906.

To—	Rate.			
	Prepared sizes.	Pea coal.	Buck. No. 1.	Buck. No. 2.
Port Richmond (Philadelphia, Pa.) for reshipment by water.....	170	140	125	125

On anthracite coal shipped over Port Richmond piers an allowance of 40 cents per gross ton on prepared sizes, 25 cents per gross ton on pea and buckwheat No. 1, and 35 cents per gross ton on buckwheat No. 2 will be made when the coal is destined to points beyond the Capes of the Delaware.

Above rates apply on date coal is transshipped into vessels without regard to time of passing P. & R. Ry. Company's scales.

Subject to change without notice, except such as is required under the Interstate Commerce law.

JOHN H. JONES,
Coal Freight Agent, P. & R. Ry.,
Philadelphia, Pa.

Reading Terminal, Philadelphia, August 23, 1906—300.

APPENDIX No. 5.

I. C. C. No. A 324
(Cancels I. C. C. No. A 231.)

PHILADELPHIA AND READING RAILWAY CO.

Coal Freight Department.

COAL TARIFF No. 286 A OF 1909.

[Cancels Coal Tariff No. 200 A of 1906.]

Rates in cents per ton (2,240 pounds) on

ANTHRACITE COAL

Reshipped into vessels at Port Richmond, Pa.,

From Collieries in Shamokin, Mahanoy, Schuylkill, Lorberry, and Lykens Valley Districts.

(See Geographical and Alphabetical List of Collieries, I. C. C. No. A 19 and Supplement No. 1 thereto or subsequent issues.)

Issued March 9, 1909. Effective April 8, 1909.

To—	Rate.			
	Prepared sizes.	Pea coal.	Buckwheat No. 1.	Buckwheat No. 2.
Port Richmond (Philadelphia, Pa.) for reshipment by water (see note 1)	170	140	125	125

NOTE 1.—On anthracite coal shipped over Port Richmond piers an allowance of 30 cents per gross ton on prepared sizes and 25 cents per gross ton on pea, buckwheat No. 1, buckwheat No. 2, and smaller sizes, for boat freight and discharging, will be made when the coal is destined to points in Philadelphia Harbor or points inside the Capes of the Delaware.

The rates as shown on this tariff will also apply upon shipments from Morea, Lytle, and Pine Hill collieries, located on Pennsylvania R. R. lines in the Schuylkill district. See I. C. C. No. A 19 or subsequent issues.

For rates covering diversions and reconsignments, see I. C. C. A 316 or subsequent issues.

Above rates apply on date coal is transshipped into vessels, without regard to time of passing P. & R. Ry. Company's scales.

E. B. CROSLEY,
Coal Freight Agent,
Philadelphia.

File 290.
Agent's compartment number 215.

APPENDIX No. 6.

[Copy.]

THE PHILADELPHIA & READING RAILROAD COMPANY,
COAL FREIGHT OFFICE.

GEO. C. COUGHLIN,
Coal Freight Agent.

D. JONES, ESQ., *Comptroller.*

Philadelphia, April 13th, 1889.

DEAR SIR: Referring to anthracite coal tariff No. 13 A, taking effect April 15th, 1889. The rates to Philadelphia cover the delivery via Port Richmond, subject to an adjustment of 30 cents per gross ton, when consigned to points in the Philadelphia Harbor and also on consignments to points beyond the Capes of the Delaware.

The above rates include shipping at Port Richmond, but are exclusive of the cost of trimming.

Freight should in all cases be prepaid to Port Richmond, subject to above adjustment, on presentation of whatever evidence you may require of shippers as to final disposition of cargo.

Yours, truly,

_____,
Coal Freight Agent.

RATES TO PORT RICHMOND (OUTSIDE THE CAPES) FROM MARCH 1ST, 1894, TO DECEMBER 31ST, 1901.

ACTUAL ADJUSTMENTS.

No record of rate of adjustment in coal freight department until March 1st, 1894.

Effective March 1st, 1894, rate orders were issued monthly, specifying net f. o. b. rates to which tariff rates would be adjusted on "Outside the Capes" shipments.

Month.	Schuylkill Haven and Tamaqua.			Pine Grove.		
	Prepared sizes.	Pea coal.	Buckwheat and smaller.	Prepared sizes.	Pea coal.	Buckwheat and smaller.
March, 1894	$1.25	$1.10	$0.95	No mention made of Pine Grove in these orders.		
April to June, 1894	1.15	1.10	.95			
July, 1894, to April, 1895	1.15	1.10	.95	$1.30		
May, 1895, to June, 1895	1.05	1.05	.95	1.20		
			Buckwheat.			
July, 1895, to May, 1896	1.05	1.00	.90	1.20	No mention made of Pine Grove in these orders as to pea and smaller.	
June, 1896	1.10	1.00	.90	1.25		
July, 1896	1.15	1.00	.90	1.30		
August, 1896, to December, 1896	1.20	1.00	.90	1.35		
January, 1897, to June, 1901	1.15	1.00	.90	1.30		
July, 1901	1.25	1.10	[a] .95 [b] .90	1.40		
August, 1901, to December, 1901	1.30	1.15	[a] 1.00 [b] .90	1.45		

[a] Buckwheat No. 1. [b] Buckwheat No. 2.

There were no rate orders issued after December, 1901, and the records in coal freight agent's office indicate that no instructions as to settlements were given; the assumption is that the tariffs were followed.

RATES TO PORT READING FROM SEPTEMBER 16TH, 1892, TO SEPTEMBER 7TH, 1896.

The line to Port Reading, N. J., was not opened until September, 1892, therefore no rates to Port Reading were in effect prior to that date.

Coal tariff No. 134 A, of 1892.

This tariff became effective September 16th, 1892, and names rates as follows to "Pt. Reading, f. o. b., N. J.:"

From collieries shipping via Schuylkill Haven and Tamaqua:

Prepared sizes	$1.85
Pea coal	1.55
Buckwheat and culm	1.35

From collieries shipping via Pine Grove:

Prepared sizes	$2.00
Pea coal	1.70
Buckwheat and culm	1.35

Neither this tariff nor any supplement thereto provided for an allowance for boat freight and discharging or otherwise.

This tariff remained in effect until April 1st, 1893.

Coal tariff No. 159 A, of 1893.

[Superseding coal tariff No. 134 A, of 1892.]

This tariff became effective April 1st, 1893, and names rates as follows to "Pt. Reading, f. o. b., N. J.:"

From collieries shipping via Schuylkill Haven and Tamaqua:

Prepared sizes	$1.70
Pea coal	1.40
Smaller sizes	1.25

From collieries shipping via Pine Grove:

Prepared sizes	$1.85
Pea coal	1.55
Smaller sizes	1.25

Neither this tariff nor any supplement thereto provided for an allowance for boat freight and discharging or otherwise.

This tariff remained in effect until September 7th, 1896.

RATES TO PORT READING, N. J., FROM MARCH 1ST, 1894, TO SEPTEMBER 7TH, 1896.

ACTUAL ADJUSTMENTS.

No record of rate of adjustment in Coal Freight Department until March 1st, 1894.

Effective March 1st, 1894, rate orders were issued monthly, specifying net f. o. b. rates to which tariff rates would be adjusted.

Month.	Schuylkill Haven and Tamaqua.			Pine Grove.		
	Prepared sizes.	Pea coal.	Buckwheat and smaller.	Prepared sizes.	Pea coal.	Buckwheat and smaller.
March, 1894	$1.50	$1.40	$1.20	No mention made of Pine Grove in these orders.		
April to June, 1894	1.40	1.40	1.20			
July, 1894, to April, 1895	1.40	1.40	1.20	$1.55		
May, 1895, to June 1895	1.25	1.25	1.20	1.40		
			Buckwheat.		No mention made of Pine Grove in these orders as to pea and smaller.	
July, 1895, to March, 1896	1.25	1.15	1.10	1.40		
April, 1896, to May, 1896	1.25	1.10	1.10	1.40		
June, 1896	1.30	1.10	1.10	1.45		
July, 1896	1.35	1.10	1.10	1.50		
August, 1896	1.45	1.10	1.10	1.60		
Sept., 1896, to Sept. 7, 1896	1.50	1.10	1.10	1.65		

RATES TO PORT LIBERTY FROM JANUARY 1ST, 1892, TO SEPTEMBER 7TH, 1896.

Coal tariff No. 19a (of 1889).

This tariff was issued prior to January 1st, 1892, and was in effect on that date, and names rates (on anthracite coal, in cargo lots consigned to shipping port named below, for reshipment by vessel), in connection with the Central R. R. of New Jersey to "Pt. Liberty, N. J."

From collieries shipping via Schuylkill Haven and Tamaqua	$1.75
From collieries shipping via Pine Grove	1.90

This tariff provided that the rates on pea coal would be 30 cents less than the above rates. Also that the rates on buckwheat and culm will be 50 cents per ton less from collieries shipping via Schuylkill Haven and Tamaqua, and 60 cents per ton less from collieries shipping via Pine Grove, than on prepared sizes.

This tariff bore the following note:

"An additional charge of twenty-five cents per ton will be made on chestnut and smaller sizes of coal to whatever point consigned. If the shipper signs a release of all demands arising from a deficiency of weight at the place of destination and agrees to indemnify the company from all claims by reason thereof, such additional charge will not be made. Releases, properly prepared, will be furnished, and can be signed at the coal offices of the company."

This tariff remained in effect until September 12th, 1892.

Coal Tariff No. 107 A, of 1892.

[Superseding coal tariff No. 19 A, of April 15th, 1889, and supplement.]

It will be noted that this tariff supersedes original tariff No. 19 A, of 1889, *and supplement.* There is no record of any supplement having been issued to this tariff.

This tariff became effective September 12th, 1892, and names rates in connection with Central R. R. of New Jersey (on anthracite coal, in cargo lots consigned to shipping port named below, for reshipment by vessel), via Bound Brook, N. J., to "Pt. Liberty, f. o. b., N. J."

From collieries shipping via Schuylkill Haven and Tamaqua:

Prepared sizes	$1.90
Pea coal	1.60
Buckwheat and culm	1.40

From collieries shipping via Pine Grove:

Prepared sizes	$2.05
Pea coal	1.75
Buckwheat and culm	1.40

Neither this tariff, nor any supplement thereto, provided for an allowance for boat freight and discharging or otherwise.

This tariff remained in effect until April 1st, 1893.

Coal Tariff No. 165 A, of 1893.

[Superseding coal tariff No. 107 A, of 1892.]

This tariff became effective April 1st, 1893, and names rates in connection with the Central R. R. of New Jersey (on anthracite coal, in cargo lots consigned to the shipping port named below, for reshipment by vessel), via Bound Brook, N. J., to "Pt. Liberty, f. o. b., N. J."

From collieries shipping via Schuylkill Haven and Tamaqua:

Prepared sizes	$1.75
Pea coal	1.45
Smaller sizes	1.25

From collieries shipping via Pine Grove:

Prepared sizes	$1.90
Pea coal	1.60
Smaller sizes	1.25

Neither this tariff, nor any supplement thereto, provided for an allowance for boat freight and discharging, or otherwise.

This tariff remained in effect until September 7th, 1896.

RATES TO PORT LIBERTY, N. J., FROM MARCH 1ST, 1894, TO SEPTEMBER 7TH, 1896.

ACTUAL ADJUSTMENT.

No record of rate of adjustment in coal freight department until March 1st, 1894.

Effective March 1st, 1894, rate orders were issued monthly, specifying net f. o. b. rates to which tariff rates would be adjusted.

Month.	Schuylkill Haven and Tamaqua.			Pine Grove.		
	Prepared sizes.	Pea coal.	Buckwheat and smaller.	Prepared sizes.	Pea coal.	Buckwheat and smaller.
March, 1894	$1.50	$1.45	$1.25	No mention made of Pine Grove in these orders.		
April to June, 1894	1.45	1.45	1.25			
July, 1894, to April, 1895	1.45	1.45	1.25	$1.60		
May, 1895, to June, 1895	1.30	1.30	1.25	1.45		
			Buckwheat.		No mention made of Pine Grove in these orders as to pea and smaller.	
July, 1895, to March, 1896	1.30	1.20	1.15	1.45		
April, 1896, to May, 1896	1.30	1.15	1.15	1.45		
June, 1896	1.35	1.15	1.15	1.50		
July, 1896	1.40	1.15	1.15	1.55		
August, 1896	1.50	1.15	1.15	1.65		
Sept., 1896, to Sept. 7th, 1896	1.55	1.15	1.15	1.70		

Second. He was further requested to produce a statement from the books of the Philadelphia and Reading Railway Company showing what proportion of the freight traffic originating on that road in the years 1900 and 1908 was anthracite coal, to which his response is as follows:

Comparative statement of anthracite to other traffic originating on Philadelphia and Reading Railway.

YEAR ENDED JUNE 30, 1900.

	Tons.
Anthracite	9,631,784
All other traffic	6,726,953
	16,358,737
Percentage of anthracite	58.88

YEAR ENDED JUNE 30, 1908.

	Tons.
Anthracite	12,227,138
All other traffic	8,647,390
	20,874,528
Percentage of anthracite	58.57

Third. He was also requested to produce a statement from the books of the Philadelphia and Reading Railway Company showing, for the calendar years 1900 and 1907 the anthracite tonnage transported by that railroad to all points and to New York Harbor f. o. b. vessel, and the portion in each instance shipped by or for the account of the Philadelphia and Reading Coal and Iron Company, whether

produced, purchased, or otherwise acquired by it, to which his response is as follows:

Statement of anthracite coal tonnage transported by Philadelphia & Reading Railway Company for year ended December 31st, 1900.

Total tonnage	[a] 9, 658, 593. 03
Of the above tonnage Philadelphia & Reading Coal & Iron Company shipped	8, 900, 328. 18
Of the above tonnage there was shipped to New York Harbor	1, 245, 830. 19
Of the above tonnage to New York Harbor Philadelphia & Reading Coal & Iron Company shipped	880, 045. 15

Statement of anthracite coal tonnage transported by Philadelphia & Reading Railway Company for year ended December 31st, 1907.

Total tonnage	[b] 14, 305, 139. 19
Of the above tonnage Philadelphia & Reading Coal & Iron Company shipped	12, 102, 708. 00
Of the above there was shipped to New York Harbor	2, 228, 537. 01
Of the above tonnage to New York Harbor Philadelphia & Reading Coal & Iron Company shipped	1, 783, 005. 12

Fourth. He was also directed to produce from the books of the Philadelphia and Reading Railway Company a statement showing the average distances it hauled its anthracite tonnage and all other freight tonnage, respectively, and its gross revenue per net ton per mile from the transportation of anthracite and from all other freight, respectively, for the fiscal year ending June 30th, 1908, to which his response is as follows:

Philadelphia & Reading Railway Company, year ended June 30, 1908.

[Tons, 2,000 pounds.]

	Anthracite coal.	All other traffic.
Net tons carried	15, 161, 960	81, 364, 094
Net tons carried one mile	1, 487, 830, 396	3, 036, 911, 699
Average distance hauled, per ton ..... miles..	98.1	96.8
Revenue received	[a] $9, 474, 209. 68	$19, 054, 167. 59
Average receipts per ton per mile ..... mills..	6.37	6.27

[a] Excludes $3,551,820.90, gathering charge of 30¢ per ton on 11,839,403.00 tons. Mileage of anthracite coal is computed from the scales. Mileage of all other traffic is actual miles.

It is agreed that Mr. Ziegler will, if the information is accessible, produce from the records of the Philadelphia and Reading Railway Company a statement showing the portion of the anthracite tonnage transported by that railway in the years 1900 and 1908, as reported to the bureau of anthracite coal statistics, which was shipped by or for the account of the Philadelphia and Reading Coal and Iron Company, and such statement may be inserted at this place. The statement follows:

Statement of the total anthracite coal tonnage transported from the mines by the P. & R. Rwy. Co., for the calendar year of 1900, as reported to the bureau of anthracite coal statistics; also the portion

[a] Excluding 891,641.12 tons of fuel supply coal transported during the year for the company's own use and not producing revenue.

[b] Excluding 1,339,656.07 tons of fuel supply coal transported during the year for the company's use and not producing revenue.

which was shipped by or for account of the Philadelphia & Reading Coal & Iron Co.:

Total tonnage	*9,338,516
Of the above there was shipped for account P. & R. C. & I. Co	8,150,454

Statement of the total anthracite coal tonnage transported from the mines by the P. & R. Rwy. Co., for the calendar year of 1907, as reported to the bureau of anthracite coal statistics; also the portion which was shipped by or for account of the Philadelphia & Reading Coal & Iron Co.:

Total tonnage	*14,018,545.00
Of the above there was shipped for account P. & R. C. & I. Co	12,072,286.14

Mr. W. G. Brown, secretary of the Philadelphia and Reading Coal and Iron Company, was subpœnaed to produce certain statements taken from the books and records of his company. He was excused from attending in person, the solicitor of his company producing his responses.

It is agreed that these responses may be read in evidence as if testified to by Mr. Brown, subject to objection as to their materiality, relevancy, or competency as to substance, but not as to the form of proof.

The subpœna directed him to produce, first, statements showing the circular or quoted prices of Philadelphia and Reading Coal and Iron Company for prepared sizes of anthracite, with all regular discounts taken off, at Buffalo, f. o. b. vessel, in each month from January 1st, 1898, to January 1st, 1909; at Philadelphia, in each month from January 1st, 1898, to January 1st, 1899; at New York, f. o. b. vessel, in each month from January 1st, 1898, to January 1st, 1900. His response is offered in evidence and marked Government Exhibits No. 193 to No. 201, inclusive.

Second. He was also directed to produce a statement from the books of the Philadelphia and Reading Coal and Iron Company showing the average price actually received by it at the mines on each size of anthracite coal and on all sizes taken together in each year from 1898 to 1908, both inclusive, to which his response is as follows:

THE PHILADELPHIA AND READING COAL AND IRON COMPANY.

Statement showing the average price received at mines for each size of anthracite coal and for all sizes taken together in each year from 1898 to 1908, both inclusive.

Year.	Lump.	Steamer.	Broken.	Egg.	Stove.	Chestnut.	Pea.	Buck.	Rice.	Average.
1898	$2.19[5]	$1.83[2]	$1.96[7]	$2.29[1]	$2.45[5]	$2.23[2]	$1.25[9]	$0.70[4]	$0.26[8]	$1.77[3]
1899	2.25[7]	1.94[7]	1.92[7]	2.26[4]	2.51[9]	2.49[7]	1.21[1]	.69[4]	.30[8]	1.84[1]
1900	2.26	2.05[3]	2.03[9]	2.39[8]	2.70[7]	2.69[6]	1.41[6]	.83[8]	.38	1.93[7]
1901	2.41[9]	2.06[1]	2.28[8]	2.75[8]	3.05[7]	3.03[6]	1.63[8]	1.00[8]	.43[1]	2.20[7]
1902	2.63[4]	2.24	2.57[6]	3.09[2]	3.22[3]	3.25[8]	1.74[3]	1.15[6]	.45[6]	2.32[8]
1903	3.03[2]	2.55[9]	2.97[7]	3.46[3]	3.54[7]	3.54[9]	1.95[2]	1.32[8]	.57[7]	2.63[4]
1904	2.79[5]	2.33[9]	2.87[5]	3.36[6]	3.50[9]	3.51[9]	1.67[8]	1.12[4]	.47[6]	2.58[4]
1905	2.74[5]	2.33[3]	2.86[6]	3.35[4]	3.48	3.49[6]	1.56[5]	1.05[6]	.45[2]	2.40[8]
1906	2.96[7]	2.34[9]	2.87[3]	3.40[3]	3.54[3]	3.55	1.55[4]	1.04[1]	.43[6]	2.32[3]
1907	3.11[8]	2.52[7]	2.85[4]	3.35	3.47[1]	3.49[6]	1.71[8]	1.11[6]	.49[9]	2.35[6]
1908	3.24[6]	2.55[9]	2.81[1]	3.33[1]	3.46[8]	3.48[7]	1.87[8]	1.25[8]	.56[7]	2.41[6]

* Does not include tonnage handled by P. & R. not originating on its lines.

Mr. R. H. Large, coal freight agent of the Pennsylvania Railroad, in response to a subpœna, furnished the following statement, which it is agreed may be here treated as though personally produced by him, subject to objection as to materiality, relevancy, or competency as to substance.

Statement from books of the Pennsylvania Railroad Company showing anthracite tonnage transported by that company to all points in the calendar years 1900 and 1907.

	Gross tons.	
	1900.	1907.
Tonnage transported	8,360,033	9,901,114
Tonnage transported for account of Susquehanna Coal Company, Mineral Railroad and Mining Company, Summit Branch Mining Company, Lykens Valley Coal Company, and Lytle Coal Company, including both coal purchased and produced or otherwise acquired by them	.....	6,859,414

NOTE.—The above figures of tonnage transported do not include some anthracite coal as to which the Pennsylvania Railroad Company performed merely a switching service and of which we have no accurate records.

Subject to the same objection, it is agreed that there may be inserted at this place a statement to be furnished by Mr. Large showing what proportion of its initial anthracite coal tonnage in the years 1900 and 1907, as reported to the bureau of anthracite coal statistics, was shipped by the Susquehanna Coal Company, the Mineral Railroad and Mining Company, the Summit Branch Mining Company, the Lykens Valley Coal Company, and the Lytle Coal Company. The statement follows:

The tonnage of 6,203,271 gross tons reported to the bureau of anthracite coal statistics as having been transported by the Pennsylvania Railroad in the calendar year 1907 includes, in addition to the tonnage originating on the Pennsylvania Railroad during the year in question, the tonnage received from the Kingston and Gaylord collieries. The total tonnage originating at mines on the Pennsylvania Railroad during the calendar year 1907 was 5,344,764 gross tons, of which 4,957,047 gross tons were shipped by or for account of the Susquehanna Coal Co., Mineral Railroad & Mining Co., Summit Branch Mining Co., Lykens Valley Coal Co., and Lytle Coal Co.

Mr. Richard D. Rickard, secretary and treasurer of the New York, Ontario and Western Railway Company, in response to a subpœna, furnished the following statement, which it is agreed may be here treated as though personally produced by him, subject to objection as to materiality, relevancy, or competency as to substance:

	Tons.
Total anthracite coal tonnage shipped in calendar year 1900 over lines of New York, Ontario and Western Railway Company to all points	1,657,006.07
Shipped by Scranton Coal Company	572,281.12
Shipped by Elk Hill Coal and Iron Company	66,955.00
Shipped from collieries purchased by above companies at different times during the year (not included in tonnages last above stated)	736,843.00
	1,376,079.12

	Tons.
Total anthracite coal tonnage shipped in calendar year 1907 over lines of New York, Ontario and Western Railway Company to all points	2,707,587.15
Shipped by Scranton Coal Company	2,689,841.03

(That company then operated all the collieries of the Elk Hill Coal and Iron Company as well as its own.)

Subject to the same objection, it is agreed that there may be inserted at this place a statement to be furnished by Mr. Rickard showing what proportion of its initial anthracite coal tonnage in the years 1900 and 1907, as reported to the bureau of anthracite coal statistics, was shipped by the Scranton Coal Company and the Elk Hill Coal and Iron Company. The statement follows:

	Tons.
Total anthracite coal tonnage shipped in calendar year 1900 over lines of New York, Ontario and Western Railway Company to all points, as reported to the bureau of anthracite coal statistics	1,658,457.00
Shipped by Scranton Coal Company	572,281.12
Shipped by Elk Hill Coal and Iron Company	66,955.00
	639,236.12
Total anthracite coal tonnage shipped in calendar year 1907 over lines of New York, Ontario and Western Railway Company to all points, as reported to the bureau of anthracite coal statistics	2,689,089.00
Shipped by Scranton Coal Company	2,689,089.00

(That company then operated all the collieries of the Elk Hill Coal and Iron Company as well as its own.)

Counsel for the Government reads from a pamphlet published by the United States Geological Survey, entitled "The Production of Coal in 1907," at page 173, the following table prepared by Mr. W. W. Ruley, with the understanding that any other tables in this pamphlet may be read in evidence at the hearing on behalf of any of the defendants.

Shipments of anthracite from washeries and total shipments, 1890–1907, in long tons.

Year.	Shipments from washeries.	Total shipments.	Percentage of washery output to total shipments.
1890	41,600	36,615,459	0.11
1891	85,702	40,448,336	.21
1892	90,495	41,893,320	.22
1893	245,175	43,089,537	.57
1894	634,116	41,391,200	1.53
1895	1,080,800	46,511,477	2.32
1896	895,042	43,177,485	2.07
1897	993,603	41,637,864	2.39
1898	1,099,019	41,899,751	2.62
1899	1,368,275	47,665,204	2.87
1900	2,059,349	45,107,484	4.57
1901	2,567,335	53,568,601	4.79
1902	1,959,466	31,200,890	6.28
1903	3,563,269	59,362,831	6.00
1904	2,800,466	57,492,522	4.87
1905	2,644,045	61,410,201	4.31
1906	3,846,501	55,698,595	6.91
1907	4,301,082	67,109,393	6.41

It is agreed that Mr. Ruley would testify that in 1906, 1907, and 1908 the shipments from washeries shown in the table were divided into buckwheat No. 1 and larger sizes, and smaller than buckwheat No. 1, as follows:

	Buckwheat No. 1 and larger sizes.	Smaller than buckwheat No. 1.	Total.
1906	1,221,057	2,625,444	3,846,501
1907	1,327,904	2,973,178	4,301,082
1908	1,064,452	2,581,798	3,646,250

Government counsel offered in evidence, marked "Government Exhibit No. 202," a copy of a proposed sixty-five per cent form of contract to be made by the Pennsylvania Coal Company as vendee with the Dolph Coal Company, Limited.

Mr. PLATT. I object to the offer on behalf of the Lehigh Valley Railroad Company as not being competent or relevant to prove or as tending to prove any of the issues in this case as against the Lehigh Valley Railroad Company or the Lehigh Valley Coal Company.

Counsel for the Temple Iron Company and the independent companies represented by Willard, Warren, and Knapp, interpose an objection to the offer of this contract as being incompetent, irrelevant, and immaterial, as not affecting their rights in this suit in any way.

Counsel for the Government offered in evidence map entitled "Philadelphia and Reading Railway and Connections, 1900," published by the Philadelphia and Reading Railway Company. Map marked "Government Exhibit No. 203."

Counsel for the Government stated that they proposed to read extracts from the annual reports of the defendant companies.

Judge MOOT. I call on counsel to state whether he will say that there was not an understanding that the defendants' counsel might read at the hearing from the reports from which he proposes to put extracts in evidence.

Mr. MCREYNOLDS. I am not undertaking to vary or modify or change one hair's breadth anything that has been agreed on already. Counsel for the Government desire at this time to read into the record certain excerpts from the report of the defendant companies, as they deem that the best way to put before the court what they wish in. If counsel for the other side wish to introduce the records in some form they are perfectly at liberty to do so, under any understanding that has existed from the beginning of the case up to the

present time. If counsel for the defendant wish to read from these reports at the hearing of the case, counsel for the Government have not the slightest objection.

Mr. PLATT. I do not want anything to be read on the hearing of this case from the reports of any other companies, unless it has gone into the record in the case, so I know what is there.

Major WARREN. What are the reports you propose to read from?

Mr. MCREYNOLDS. The annual reports.

Mr. PLATT. I do not want any of the counsel to introduce any evidence in this case before we have an opportunity to see it. This case may go to the Supreme Court of the United States, and if it does we must have a record.

Mr. MCREYNOLDS. Therefore, it seems to me the way to put these things in is to put them in the record.

Judge CAMPBELL. I desire to make an objection, that inasmuch as this is new matter, presented under the allegation that it is rebuttal, we reserve the privilege of recalling the examiner, after having examined the reports from which these excerpts are taken, to put in such other portions of the reports as we may find to be necessary as surrebuttal.

Mr. MCREYNOLDS. You may read into the record anything from your annual report that you want to put in. You may read them or copy the record beginning with page 1 to the end of the volume. There is no objection on our part to your reading anything into this record from these reports that you please, from the beginning to the end.

Major WARREN. Your point is that while they may be read into the record, then when we come to the argument, that which is to be presented to the court is that which is on record?

Mr. MCREYNOLDS. How are you going to get it before the court? You may read them as much as you please.

Major WARREN. It was understood that we might read such portions as we found we had not read.

Mr. MCREYNOLDS. I do not care. We want in the record the parts of the reports that we regard as important. You can put in what you please. If you want to read it to the court, you may read it.

Mr. DE FOREST. And can put them into the record.

Mr. MCREYNOLDS. All of them. Absolutely the whole thing from the first report made in the year 1 to the end of time.

Mr. DE FOREST. And that after we see what portions you put in?

Mr. MCREYNOLDS. Precisely.

After further discussion Major Warren stated there was offered in evidence here on our side of this case the Anthracite Strike Commission, containing hundreds of pages. That was offered by us, but it is not printed here as an exhibit in its entirety.

Mr. MCREYNOLDS. That is a public document.

Major WARREN. But it is not a document of which the court will take judicial notice.

Mr. McReynolds. It is a document to which we said we would have no objection of that sort.

Government counsel offered in evidence extracts from certain of the annual reports of the defendants with the same effect as if those reports were produced and read from by the secretary of such companies in obedience to subpœnas, with the understanding that any of the defendants may object to the materiality, relevancy, or competency of such evidence as to substance, or may produce such other extracts from the reports or such other evidence explanatory or meeting what is read, as they shall be advised, provided all evidence and exhibits are in the hands of the examiner by the 20th day of October next.

In particular counsel for defendants now note the objection that the statements or admissions now offered of one corporation are not statements or admissions that are competent or material evidence against another of the defendants.

Counsel for Reading Companies object that the excerpts proposed to be read should have been introduced into the record pursuant to the stipulation in the record, before the case of the Government was closed, and in chief that this is not at this time proper rebutting evidence, and the Reading Companies reserve the right, if so advised hereafter, to introduce into the record in the same way such additions from the several reports as they may be advised.

Counsel for the Government have no objection, but they should be introduced in some reasonable time, so the record may be filed of record.

It is agreed by all present that the exhibits and the evidence of all parties shall be in the hands of the examiner by the 20th day of October, 1909.

Mr. Todd read in evidence the following extracts from the annual reports of the various companies referred to:

[From the report of the president and managers to the stockholders of The Philadelphia and Reading Railroad Company for the year ending November 30th, 1891, signed by A. A. McLeod, president.]

(Page 15): "The coal lands comprise in extent about 33 per cent of the entire anthracite coal fields of the State, and taking into account the aggregate thickness of the veins on the company's lands, and the greater proportionate depletion of the estates in the other regions which has been going on for many years, it must be conceded that we have at least 50 per cent of the entire deposit remaining unmined."

[From the report of the operations of The Philadelphia and Reading Railroad Company for the year ending November 30th, 1893, signed by J. S. Harris, president.]

(Pages 26 and 27): "Every effort has been made to extend the business which the railroad company exchanges with its connecting

railroads. So great a volume of freight traffic originates at the Reading Company's mines and in the busy region whose iron and other manufactured products seek an outlet to market over its railroads, and this region furnishes so large a market for food products, articles of clothing, and an infinite variety of manufactured products that connecting railroads will always be glad to carry freight destined from or to the Reading Company's territory. The management does not feel, therefore, that there is any risk of the crippling of the development of the business of the Reading Companies because they no longer control the railroads or the coal mines that have lately been detached from their system. On the contrary, they have felt great relief in having no longer to provide for the financial requirements of these properties, and they find the management of the remaining property is sufficient to require their best efforts and all the capital they can command. They feel that no further acquisitions of railroads or mining property should be contemplated in the near future, and hope that if they can secure a reasonable share of the growth of the country's business and can conduct it with economy and prudence, they will be doing all that is possible to build up the value of the securities of the two Reading Companies.

"The relations with all connecting railroads are friendly and cordial, and in respect to the principal railroad systems which were lately in close alliance with the Reading Company, the exchange of business and the division of earnings arising therefrom is made on the same lines as before the leases of 1892, and in accordance with the rules that have been agreed upon during many years of more or less active rivalry."

[From the report of the operations of the Philadelphia and Reading Railroad Company for the year ending November 30th, 1894, signed by J. S. Harris, president.]

(Page 9): "The management have always felt that of all branches of the business of the Reading Companies, the most important and the most promising is the production and sale of anthracite. In all other departments the Reading Companies compete with rivals who are placed and equipped for business as well as or better than themselves, but in the coal business they have a vast undeveloped estate, which needs only time, patience, and resolution to develop profitably. To this development, both in producing and marketing the coal, they have devoted their best energies."

[From the report of the operations of the Philadelphia and Reading Railroad Company for the year ending November 30th, 1895, signed by J. S. Harris, president.]

(Page 11): "The company's coal business resulted in a loss of $699,809.21, being 8.1 cents per ton of coal mined, whereas the busi-

ness of 1894 showed a profit of $268,552.89, or 33 cents per ton; so that the result for 1895 was 11.4 cents per ton worse than in the previous year. This comparative loss was caused by the low prices realized for coal, which, with the exception of the year 1886, were less than those of any year since 1879.

"While the business was a losing one for the Coal and Iron Company, this loss was more than made up by the gain to the railroad company from the additional tonnage produced, which was carried at freight rates which yielded a profit."

[From the second annual report of the Reading Company for fiscal year ended June 30, 1899; signed by J. S. Harris, president.]

(Pages 11 and 12): "The total production of anthracite coal from lands owned and leased by The Philadelphia and Reading Coal and Iron Company in the year of 1898-9 was 8,183,644 tons .09 cwt., an increase of 556,968 tons 13 cwt. over the production of the previous year, or 7.3 per cent, the production of the whole region having increased in the calendar year of 1898 about ⅝ of one per cent over the production of the year 1897.

"The coal purchased aggregated 1,195,381 tons, an increase of 112,978 tons, or 10.5 per cent, and the sales amount to 8,303,344 tons, an increase of 597,175 tons, or 7.7 per cent, over previous year.

"The cost of coal mined and purchased for the year was $1.58⅝, which is 19½ cents lower than the cost for the previous year.

"All work done at the collieries and all additions made to their structures have been charged to cost of coal.

"The work which has been carried on for several years with the purpose of reducing the number of separate workings and of increasing the average output of the collieries, and thus lessening the cost of each operation, has been carried so far that whereas in June, 1893, fifty-four collieries produced a daily average of 38,160 tons, or 706 tons per colliery per day; in June, 1899, forty-one collieries produced a daily average of 48,048 tons, or 1,172 tons per colliery per day. The decrease in the number of collieries has been caused by the closing of worked-out collieries and of collieries of which the working was excessively costly and by the consolidation of contiguous collieries. The collieries have still a capacity of daily production in excess of the maximum amount that they are likely to be called upon to produce, and they and all their appliances are in thoroughly good order.

"The development of the collieries has resulted in considerable economies of production, and the average cost of all the coal mined was less than for any year since 1879."

[From the sixth annual report of the Reading Company for fiscal year ended June 30, 1903, signed by George F. Baer, president.]

(Page 15): "In pursuance of the policy of the company to make reasonable provision against the depletion of its estate, there was set aside out of the revenue the sum of $340,445.83, being five (5) cents per ton on all coal mined from the company's lands during the current fiscal year. This sum has been used in the purchase of securities, and the total amount now in this fund, including the cash, is $2,030,757.34."

[From the eleventh annual report of the Reading Company for fiscal year ended June 30th, 1908, signed by George F. Baer, president.]

(Page 10):

The accumulated surpluses of the three companies June 30, 1908.

Reading Company, June 30, 1907	$11,518,551.38		
Year ended June 30, 1908 (including $6,000,000.00 dividends paid by Philadelphia and Reading Railway Company)	8,895,589.66		
		$20,414,141.04	
Less:			
Dividend on first preferred stock, Sept. 10, 1907	590,000.00		
Dividend on first preferred stock, Mar. 9, 1908	590,000.00		
Dividend on second preferred stock, Nov. 9, 1907	840,000.00		
Dividend on second preferred stock, May 9, 1908	840,000.00		
Dividend on common stock, Aug. 1, 1907	1,400,000.00		
Dividend on common stock, Feb. 1, 1908	1,400,000.00		
General mortgage sinking fund	544,695.10		
		6,144,695.10	
			$14,269,445.94
Philadelphia and Reading Railway Company, June 30, 1907	9,816,427.01		
Less:			
Dividend paid Oct. 31, 1907	2,000,000.00		
Dividend paid Dec. 2, 1907	2,000,000.00		
Dividend paid June 30, 1908	2,000,000.00		
	6,000,000.00		
		3,816,427.01	
Year ended June 30, 1908		6,345,639.43	
			10,162,066.44

The Philadelphia and Reading Coal and Iron Company, June 30, 1907	$1,188,438.52	
Year ended June 30, 1908	207,523.77	
		$1,395,962.29
Total surplus June 30, 1908		25,827,474.67

[From the same report.]

OCEAN BUSINESS.

(Page 15): "The following statement shows the number of tons of merchandise, anthracite and bituminous coal shipped from Port Richmond, whether to foreign or domestic ports, during the past six years:

Year ended June 30.	1907-1908.	1906-1907.	1905-1906.	1904-1905.	1903-1904.	1902-1903.
Merchandise (tons 2,000 lbs.)	1,043,090.00	1,130,280.00	1,157,805.00	788,847.09	845,958.08	1,093,493.13
Anthracite coal (tons 2,240 lbs.)	2,190,413.08	1,917,196.09	1,751,315.01	1,943,545.01	2,072,233.03	1,098,510.18
Bituminous coal (tons 2,240 lbs.)	2,021,639.10	1,769,787.00	1,422,830.00	1,596,020.03	1,402,609.16	1,305,848.00

[From the same report.]

(Page 16): "The total value of the rolling equipment in our possession, including that owned by Reading Company and that covered by equipment leases, has increased from $16,990,856.19, as of December 1, 1896, to $43,072,715.28 as of June 30, 1908, and the value of floating equipment has increased during the same period from $1,439,850 to $3,841,048, making a total increase of value of $28,483,057.09.

"This increase has been contributed--

By Reading Company		$19,436,391.45
By outstanding car trusts		9,046,665.64
		28,483,057.09

[From the same report.]

(Page 17): "From the earnings of the company for the fiscal year there was appropriated to the depletion of lands fund the sum of $514,349.90, being 5 cents per ton on coal mined from the company's lands during the year, and this account now stands as follows:

Balance July 1, 1907, per annual report	$1,523,810.76	
Amount appropriated for year ending June 30, 1908, 10,286,997.19 tons, at 5 cents per ton	514,349.90	
Income from investments	45,025.97	
		$2,083,186.63
Less amount invested in coal lands and permanent improvements and transferred to capital account		580,253.90
Balance of account June 30, 1908		1,502,932.73
Which is invested as follows:		
Securities owned	$1,083,093.61	
Cash	419,839.12	
		1,502,932.73

[From the same report.]

(Page 51):

The Philadelphia and Reading Coal and Iron Company. Income account for the year ended June 30, 1908, compared with the year 1907.

	1907–1908.		1906–1907.	
	Amount.	Total.	Amount.	Total.
Receipts:				
Coal sales (anthracite)	$36,669,481.25		$37,352,804.44	
Coal sales (bituminous)	859,011.61		926,104.32	
Coal rents	308,755.24		281,622.17	
House and land rents	124,523.86		116,141.72	
Interest and dividends	15,199.07		38,008.49	
Miscellaneous	37,449.58		32,880.49	
Total receipts		$38,014,420.61		$38,747,561.63
Expenses:				
Mining coal and repairs	19,026,334.47		18,741,729.48	
Coal purchased (anthracite)	2,497,487.18		2,494,462.53	
Coal purchased (bituminous)	804,653.91		841,991.45	
Royalty of leased collieries	667,722.48		677,143.64	
Transportation of coal by rail	9,188,714.99		8,819,396.84	
Transportation of coal by water	1,463,367.59		1,340,071.56	
Handling coal at depots	482,126.40		543,137.08	
Taxes on coal lands & impts	339,087.63		296,952.68	
Improvements and repairs of houses	49,849.13		53,039.65	
Damages account coal dirt	2,054.02		15,767.73	
All other expenses	984,331.46		1,007,578.34	
Coal sold from stock			444,495.72	
	35,505,729.26			
Less coal added to stock	1,200,926.54			
Total expenses		34,304,802.72		35,275,766.70
		3,709,617.89		3,471,794.93
Improvements at collieries, &c		1,286,010.65		1,345,228.73
Profit in operating		2,423,607.24		2,126,566.20
Depletion of coal lands fund	514,349.90		499,059.26	
Fixed charges and taxes	117,248.17		115,074.91	
2% interest on Reading Company loan	1,584,485.40		1,583,914.05	
		2,216,083.47		2,198,048.22
		a 207,523.77		b 71,482.02
Profit of previous years		1,188,438.52		1,259,920.54
Balance to credit of profit and loss account		1,395,962.29		1,188,438.52
Tonnage:				
Mined (anthracite)		10,218,392.05		10,034,713.02
Purchased (anthracite)		1,083,681.19		1,107,848.07
Sold (anthracite)		10,992,975.16		11,492,511.15
On hand (anthracite)		1,020,731.09		684,988.09

a Profit. b Loss.

[From the annual report of the board of directors of the Lehigh and Wilkes-Barre Coal Company to its stockholders for the year ending December 31st, 1901, signed by George F. Baer, president.]

(Page 35): "There was mined during year 1901, 3,414,735.05 tons, an increase of 592,025.14 tons as compared with year 1900, and 774,660.02 tons purchased, an increase of 300,692.03 tons over 1900.

"The tonnage sold during year was 4,077,305.13 tons, an increase of 626,135.09 tons. The tonnage of prepared sizes sold, including lump, equalled 67¹⁄₁₀%, and of pea and smaller 32⁹⁄₁₀%, as against 67⁴⁄₁₀% for prepared, and 32⁶⁄₁₀% for the previous year.

"The output per day of collieries operated during the year averaged 17,290 tons, as compared with 16,856 tons output for previous year.

"3,216,434.06 tons of coal were mined from the company's lands during the past year. As every ton of coal mined from the company's property decreases its value, and is an exhaustion of capital, in accordance with the practice of other companies it was deemed advisable to set apart out of income ten (10) cents per ton to represent depletion of the coal lands of the company. Depletion of coal lands fund has been debited with the amounts credited to the mortgage sinking funds."

[From the same report.]

(Page 39):

Statement of income account.

	Year 1901.		As compared with year 1900.	
			Increase.	Decrease.
Earnings:				
Coal sales	$12,113,547.21		$2,484,171.30	
Coal mined by tenants	369,395.00		53,433.29	
House and ground rents	49,366.10			$258.84
Interest account	19,312.31			120.13
Miscellaneous	24,626.11			11,069.10
		$12,576,246.73	2,826,166.52	
Expenses:				
Mining coal and repairs	4,319,366.78		938,332.06	
Colliery improvements	424,239.53		295,626.88	
Royalty, leased properties	248,103.31		28,879.46	
Coal purchased	1,625,893.19		812,348.19	
Transp'tion, yard & agency exps	4,221,128.27		871,120.69	
General expenses	88,077.18			8,535.93
Taxes, state and local	191,307.93			5,044.94
Insurance	21,548.47		8,178.80	
Depletion coal lands fund	221,535.00		221,535.00	
	11,361,199.66		3,153,440.21	
Less value coal stocked	352,331.65			661,930.85
		11,008,868.01	2,491,509.36	
		1,567,378.72	34,657.16	
Interest:				
Consols extended 1910	547,875.00			99,541.66
Gold bond 1910	441,716.94		209,815.55	
Five per cent loan 1912	134,550.00			
Income bond 1899	164,710.00			
Real estate mortgage	356.94			19,476.39
Bills payable	179,979.98			9,749.60
	1,469,188.86		81,047.90	
Sinking funds	100,108.40			24,827.14
		1,569,297.26	56,220.76	
Deficit		1,918.54		21,563.60

[From the report of the board of directors of the Lehigh and Wilkes-Barre Coal Company to its stockholders for the twelve months ending June 30, 1908, signed by George F. Baer, president.]

(Page 5): "There were mined during the period 4,227,573.02 tons, and 1,145,764.06 tons purchased.

"The tonnage sold was 5,271,538.09 tons. The tonnage of prepared sizes sold, including lump, equaled .6771%, and of pea and smaller .3229%.

"4,215,683.06 tons of coal were mined from the company's lands. There has been set apart out of income ten (10) cents per ton on this tonnage to represent depletion of the coal lands of the company. Depletion of coal lands fund has been debited with the amounts credited to the mortgage sinking funds."

[From the same report.]

(Page 9):

Statement of income account, 12 months ending June 30th, 1908.

EARNINGS.

Coal sales		$17,707,148.78	
Coal mined by tenants	$456,839.94		
House and ground rents	40,291.84		
Interest account	66,646.03		
Miscellaneous	20,010.30		
		583,788.11	
			$18,290,936.89

EXPENSES.

Mining coal and repairs	6,365,762.47	
Colliery improvements	335,951.31	
Royalty, leased properties	328,432.72	
Coal purchased	2,974,502.52	
Transportation, yard, and agency expenses	4,542,021.43	
General expenses	118,255.02	
Taxes, state and local	496,286.81	
Insurance	17,376.00	
Depletion coal lands fund	254,467.74	
Less value of coal stocked	367,839.19	
		15,065,216.83
		3,225,720.06

INTEREST.

Consols extended, 1910	547,875.00	
Gold bonds, 1910	441,716.94	
Five per cent loan, 1912	134,550.00	
	1,124,141.94	
Sinking funds	167,100.59	
		1,291,242.53
Surplus		1,934,477.53

[From the report of the board of directors of the Central Railroad of New Jersey for the fiscal year ended June 30, 1908, signed by George F. Baer, president.]

(Pages 12 and 13):

Condensed balance sheet.

Railroad and equipment		$69,209,835.16	Capital stock		$27,436,800.00
Securities owned	$24,948,841.83		Funded debt:		
Insurance fund, represented by bonds in hands of treasurer	100,000.00		General mortgage bonds, 1987	$45,091,000.00	
		25,048,841.83	Equipment bonds, sundry dates	7,760,000.00	
Advances for construction		2,071,440.39			52,851,000.00
Material supply, as per inventory		1,600,425.60	Current liabilities:		
Current assets:			Vouchers, pay rolls and temporary loans	3,921,696.66	
Cash	1,833,118.91		Interest due July 1, 1908	985,462.50	
Due from agents	905,601.44		Interest, dividends, etc., due prior to June 30, 1908	38,356.75	
Due from railroads and transportation companies	1,940,502.73		Rentals	945.00	
Due from other companies and individuals	1,837,727.63		Due to railroad and transportation companies	423,649.08	
		6,516,950.71	Due to other companies and individuals	1,480,107.51	
Other assets:					6,850,217.50
Deferred accounts		428,688.71	Dividends due stockholders payable Aug. 1, 1908		548,736.00
			Other liabilities:		
			Interest accrued, not due	50,586.66	
			Rentals accrued, not due	5,600.00	
			Taxes	2,400,632.87	
			Other accounts	205,745.87	
					2,662,565.40
			Insurance reserve fund	225,763.20	
			Taxes anticipated	300,000.00	
			Additions and betterments fund	2,391,876.26	
			Equipment replacements	1,025,918.02	
					3,943,557.48
			Profit and loss:		
			June 30, 1907	9,579,874.46	
			Income account	$628,529.32	
			Miscellaneous items (profit and loss)	374,902.24	
				1,003,431.56	
					10,583,306.02
		104,876,182.40			104,876,182.40

PAGE BOUND VI

[From the same report.]

(Page 14):

Rentals.

Allentown Terminal R. R	$13,500.00
Dover & Rockaway R. R	11,000.00
Hibernia Mine R. R	12,500.00
Lehigh & Susquehanna R. R	2,051,953.70
New York & Long Branch R. R	130,137.40
Ogden Mine R. R	23,000.00
Wilkes-Barre and Scranton R. R	66,345.33
Sundry roads (trackage, etc.)	34,259.95
Total of rentals	2,342,696.38
Total accrued charges for interest and rentals	5,363,878.68

PAGE BOUND VERTICAL IN BOOK

(Page 16.)

[From the same report.]

Statement of earnings and expenses and income account for the fiscal year ended June 30, 1908, compared with the corresponding period ended June 30, 1907.

	1908.			1907.			Changes.	
	Rail lines.	Outside operations, including N. Y. & L. B. R. R.	Total.	Rail lines.	Outside operations, including N. Y. & L. B. R. R.	Total.	Increase.	Decrease.
Earnings:								
Merchandise traffic	$8,368,055.64	$688,689.94	$9,056,745.58	$9,288,920.02	$816,742.41	$10,105,662.43		$1,048,916.85
Coal traffic	9,099,014.77	884,885.04	9,983,899.81	8,534,366.36	777,901.68	9,312,268.04	$671,631.77	
Passenger traffic	4,282,704.29	1,367,392.98	5,650,097.27	4,247,358.93	1,263,554.16	5,510,913.09	139,184.18	
Express and U. S. mail	437,873.97	3,463.16	441,337.13	520,395.25	3,391.93	523,787.18		82,450.05
Miscellaneous	427,287.27	27,809.75	455,097.02	181,527.85	53,244.78	234,772.63	220,324.39	
Total	22,614,935.94	2,972,240.87	25,587,176.81	22,772,568.41	2,914,834.96	25,687,403.37		100,226.56
Operating expenses	[a] 13,161,678.56	2,304,959.67	15,466,638.23	11,858,942.65	2,305,175.51	14,164,118.16	1,302,520.07	
Net earnings	9,453,257.38	667,281.20	10,120,538.58	10,913,625.76	609,659.45	11,523,285.21		1,402,746.63
Less renewals and improvements								
Equipment fund					1,362,061.53			1,362,061.53
Renewal and improvement fund					1,150,000.00			1,150,000.00
Additions and betterments fund		2,000,000.00			1,000,000.00	3,512,061.53		1,000,000.00
Taxes anticipated		300,000.00					2,000,000.00	
							300,000.00	
			2,300,000.00					
Net earnings from operation			7,820,538.58			8,011,223.68		190,685.00
Income from investments			1,432,539.02			1,175,653.07	256,885.95	
			9,253,077.60			9,186,876.75	66,200.85	
Taxes		1,065,725.00			1,112,557.60			46,832.00
Interest on funded debt and guarantees		2,934,576.65			2,945,800.01			11,223.36
Interest, miscellaneous		86,605.65			92,488.89			5,883.24
Rentals of leased lines		2,342,626.38	6,429,604.28		2,765,213.13	6,916,059.63		422,516.75
			2,823,473.32			2,270,817.12	552,656.20	
Less dividends to stockholders [b]			2,194,944.00			2,194,844.00	100.00	
Surplus			628,529.32			75,973.12	552,556.20	

[a] This amount includes charges aggregating $1,405,091.23 for depreciation, etc. (See page 11.)

[b] *Dividends.*

2% paid November 1, 1907	$548,736.00
2% paid February 1, 1908	548,736.00
2% paid May 1, 1908	548,736.00
2% payable August 1, 1908	548,736.00
	2,194,944.00

[From the fifty-fourth annual report of the board of directors of the Lehigh Valley Railroad Company to the stockholders, fiscal year ended June 30, 1908, signed by E. B. Thomas, president.]

(Page 36):

Operating expenses.

Years end e June 30th.	Maintenance of way and structures.	Maintenance of equipment.	Traffic and transportation expenses.	General expenses.	Total operating expenses.	Ratio of total expenses to revenues.
						Per cent.
1899	$2,851,344.08	$4,345,742.18	$8,831,958.29	$577,481.13	$15,606,525.68	74.60
1900	3,687,084.39	4,335,768.55	9,428,893.60	652,078.81	18,103,825.35	77.20
1901	4,241,717.04	4,316,861.72	9,374,299.48	735,146.04	18,668,024.28	79.50
1902	3,689,987.12	4,654,257.50	8,898,286.97	738,667.14	17,981,198.73	75.17
1903	4,099,168.88	4,694,395.07	9,567,083.09	619,532.62	18,980,179.66	71.21
1904	3,059,257.82	4,745,341.80	10,469,806.29	596,895.33	18,870,301.24	63.15
1905	3,269,382.74	4,894,269.44	10,179,037.79	587,011.36	18,929,701.33	60.52
1906	3,153,245.22	5,485,794.06	10,891,953.73	621,217.71	20,152,210.72	61.46
1907	3,344,181.89	6,186,873.82	11,920,347.57	515,927.35	21,967,330.63	61.84
1908	3,496,138.82	5,987,410.64	12,146,148.95	574,006.37	22,203,704.78	62.53

The ratio of each class of operating expenses to total operating revenues is as follows:

	1899.	1900.	1901.	1902.	1903.	1904.	1905.	1906.	1907.	1908.
	P. ct.	*P. ct.*	*P. ct.*	*P. ct.*	*P. ct.*	*P. ct.*	*P. ct.*	*P. ct.*	*P. ct.*	*P. ct.*
Maintenance of way and structures	13.63	15.72	18.07	15.42	15.38	10.24	10.45	9.62	9.41	9.85
Maintenance of equipment	15.99	18.49	18.38	19.46	17.61	15.88	15.65	16.73	17.42	16.86
Traffic and transportation expenses	42.22	40.21	39.92	37.20	35.89	35.04	32.55	33.22	33.56	34.20
General expenses	2.76	2.78	3.13	3.09	2.33	1.99	1.87	1.89	1.45	1.62

[From the annual report of the Delaware, Lackawanna and Western Railroad Company for the year ending December 31st, 1899, signed by W. H. Truesdale, president.]

(Page 8):

"COAL DEPARTMENT.

"The results of the operations of the coal department for the past year show a very handsome profit as against a heavy loss during the year 1898. This is, in part, due to the change in basis of charging the coal department for transportation of coal on the lines of the company, as heretofore explained, but to a greater extent to the very much improved conditions of the anthracite coal business generally. There has been a larger demand for coal than during any previous year in the history of the business, the ability of the several large miners and carriers of anthracite coal during several months of the year being the only limit to the amount that could be marketed.

"As a result of these conditions, prices, while not high, have been maintained on a good paying basis during most of the year, with much more satisfactory results than for a number of years.

"This company has enjoyed its full share of these improved market conditions, and has been able as well to carry on its mining opera-

tions successfully without accident or casualty of a serious nature. While the cost to it of mining its coal has been low, it is believed its coal properties have been fully developed and maintained. The cost of everything in connection with its coal operations is included in the charges against coal mined and purchased during the year, and in addition the sum of $150,000 has been so charged and appropriated for extraordinary repairs, improvements, etc., which will be expended during the coming year for new machinery, new washeries, and various appliances for cheapening the cost of mining, preparing, and handling the coal mined by the company."

[From the same report.]

(Pages 10 and 11): "The problems which this company has to consider and solve are in all respects similar, and in many particulars the same, as those which the railways generally of this country have under consideration; some have more nearly reached a solution than others. It is that of decreasing its transportation cost by the use of heavier locomotives and cars and the adoption of modern methods and improved devices for maintaining its property.

"A start has been made in this direction during the past year and some progress secured. Contracts have been let for forty-five (45) new heavy locomotives for delivery early in the year 1900 and for heavy steel bridges, which will equip the line so that by the close of the year this heavy equipment can be used on its main line between Hoboken and Binghamton.

"For several years large expenditures will be required for heavy, modern equipment, and for new bridges between Binghamton and Buffalo, in order that the average freight train load be brought up to what it should be. This accomplished, the company should be able to move its large coal traffic and tonnage of miscellaneous freight at a cost which will enable it to compare and compete favorably with any other line in this country."

[From the same report.]

(Page 12):

"Condensed general balance sheet, December 31, 1899.

ASSETS.

Cost of road	$17,323,008.42	
Cost of equipment	8,114,201.37	
Other permanent investments	7,657,328.78	
		$33,094,538.57
Stocks in treasury	2,756,787.00	
Bonds in treasury	2,236,563.24	
		4,993,350.24
Advances to leased roads	1,304,848.84	
Advances to controlled roads	457,230.36	
		1,762,079.20
Advances on coal to be delivered		1,419,001.85
Coal on hand		2,464,568.46
Material, fuel, and other supplies		991,424.27

Cash	$3,108,080.61
Bills receivable	93,160.56
Due from agents, conductors, etc	450,637.01
Coal bills and sundry accounts due	2,039,018.31
Suspense account	113,841.62
	50,529,700.70

LIABILITIES.

Capital stock	$26,200,000.00
Consolidated mortgage bonds of 1907	3,067,000.00
Rentals accrued, not due	1,612,779.29
Interest accrued, not due	71,563.33
Past due dividends, interest, and rentals	124,311.62
Del., Lack. & West. dividend, payable Jan. 20	458,501.52
Audited vouchers	997,411.86
Audited pay rolls	991,772.84
Accrued taxes, not due	436,307.85
Mortgages on real estate	62,073.90
Due to companies and individuals	240,046.58
Reserve for improvements	767,229.20
Profit and loss surplus	15,500,702.71
	50,529,700.70"

(Page 15):

[From the same report.]

Coal department operations.

SALES AND EARNINGS.

	1899.			1898.		
COAL SALES.	*Tons.*			*Tons.*		
At mines	76,054	$130,885.56		79,713	$122,433.63	
Company's supply	710,334	819,273.46		737,297	1,486,669.01	
Local agencies	3,631,867	12,489,802.69		3,314,505	11,088,337.92	
Foreign agencies	1,385,949	6,823,621.09		1,398,900	6,074,685.60	
Total sales	5,804,204		$20,263,582.80	5,530,417		$18,772,126.16
Barge earnings, company's boats	511,867		163,563.10	435,019		124,612.48
RENTS COLLECTED.						
At mines		19,104.78			37,123.52	
At agencies		16,833.97	35,938.75		13,516.97	175,252.97
Total sales and earnings	5,804,204		20,463,084.65	5,530,417		18,947,379.13
Coal on hand Dec. 31, 1899	684,602		2,464,568.46	505,851		1,821,064.32
Shortage of coal at various points and agencies during previous years and charged off to income account	67,478		209,210.45			
Excess of expenses						1,887,246.91
			23,136,863.56			22,645,690.36
COST AND EXPENSES.						
Coal on hand Jan. 1, 1899	505,851		$1,821,064.32	612,695		$2,205,705.24
Cost of coal mined and purchased	6,050,434		7,894,687.98	5,423,752		7,754,883.41
TRANSPORTATION.						
By company:						
Supply coal				737,298	$403,918.07	
Local	3,842,543	$6,597,054.12		3,253,530	6,086,115.40	
Vessels	511,867	137,983.61		435,019	134,350.11	
Foreign	1,388,650	2,824,870.05		1,297,774	3,315,636.20	
By others: Foreign	1,388,650	1,453,802.91		1,297,774	961,517.45	
Total	5,231,193		11,013,710.69	5,288,502		10,901,537.23

PAGE BOUN

HANDLING, SELLING, ETC.						
Handling, local and foreign agencies	4,742,660	718,512.63		5,530,416	833,437.30	
Commissions, local and foreign agencies	3,096,972	519,728.94		2,637,114	464,730.04	
General expenses		101,723.74			119,189.19	
Total			1,339,965.31			1,417,356.63
EXTRAORDINARY.						
Betterments		9,702.48			66,495.52	
Renewals and improvements		153,560.14	163,262.62		148,609.14	215,104.66
TAXES.[a]						
Land in Pennsylvania					149,059.66	
Agencies					2,093.53	151,153.19
Total cost and expenses			22,232,090.92			
Profit			904,172.64			
			23,136,863.56			22,645,690.36

[a] Taxes for 1899 were charged in general tax account.

[From the same report.]

(Page 20):

Comparative statement showing freight-traffic movement for the years 1898 and 1899.

Commodity.	1898.	1899.	Increase.	Decrease.
Products of agriculture:	*Whole tons.*	*Whole tons.*		
Grain	861,174	784,247	.....	76,927
Flour	250,352	225,519	.....	24,833
Other mill products	131,306	162,285	30,979	.....
Hay	55,435	64,131	8,696	.....
Tobacco	15,499	17,180	1,681	.....
Cotton	32,344	20,841	.....	11,503
Fruit and vegetables	100,579	121,019	20,440	.....
Products of animals:				
Live stock	151,049	71,915	.....	79,134
Dressed meats	145,413	131,636	.....	13,777
Other packing-house products	39,526	35,118	.....	4,408
Poultry, game, and fish	21,903	23,179	1,276	.....
Wool	7,715	8,443	728	.....
Hides and leather	14,936	14,253	.....	683
Products of mines:				
Bituminous coal	507,980	349,563	.....	158,417
Coke	107,147	197,294	90,147	.....
Ores	90,301	192,889	102,588	.....
Stone, sand, and other like articles	320,394	364,284	43,890	.....
Product of forest:				
Lumber	315,626	388,885	73,259	.....
Manufactures:				
Petroleum and other oils	37,417	32,682	.....	4,735
Sugar	43,597	17,440	.....	26,157
Naval stores	1,975	740	.....	1,235
Iron, pig and bloom	7,365	136,447	129,082	.....
Iron and steel rails	2,867	13,001	10,134	.....
Other castings and machinery	161,443	161,292	.....	151
Bar and sheet metal	233,992	346,797	112,805	.....
Cement, brick, and lime	128,486	119,895	.....	8,591
Agricultural implements	14,815	16,314	1,499	.....
Wagons, carriages, and tools, etc	21,565	19,643	.....	1,922
Wines, liquors, and beers	33,213	29,512	.....	3,701
Household goods and furniture	21,109	17,008	.....	4,101
Merchandise	563,731	755,816	192,085	.....
Miscellaneous: Other commodities not mentioned above	1,092,182	1,037,886	.....	54,296
Total net tons	5,532,436	5,877,154	344,718	.....
Anthracite coal (gross tons)	6,643,402	6,731,353	87,951	.....

[From the annual report of the Delaware, Lackawanna and Western Railroad Company for the year ending December 31, 1900, signed by W. H. Truesdale, president.]

(Pages 7 and 8): "Cost of transportation has not been reduced during the past year to the extent that had been expected. This is due to a variety of causes. Chiefly, however, because the motive power of the company is inadequate to the requirements of its business. The locomotives are mostly old and light and carry too low steam pressure to be as efficient as is ordinarily required. More than 67 per cent of the engines in service carry a maximum steam pressure of 140 lbs. or under, while on most roads throughout the country anything under 160 lbs. is regarded as inefficient, and on most modern locomotives from 180 to 200 lbs. is as low as good practice permits.

"On portions of the line heavy locomotives could not be run, because the bridges were not heavy enough to carry them. These light bridges are being replaced with new heavy ones very rapidly, and in anticipation of the completion of this work, 82 new heavy passenger, freight, and switching engines have been bought for delivery during the coming year. When these are received and in

service, the transportation facilities of the company will be greatly improved and proportionally cheapened."

[From the same report.]

(Page 9): "The present condition of the trade is such that, together with the changes which have recently taken place in the ownership of large anthracite properties, this company, with all others affected, should be able to secure a price for its coal that will make good to it the increase in cost of mining its coal in future by reason of the increase in wages it must pay as result of the strike.

"The condition of the coal properties of the company has been fully maintained and in some important respects improved.

"Improvements and additions have been made during the year costing $389,129.46, as shown in detail in statements following. Of this sum $239,129.46 was charged to and included in the cost of mining coal during the past year, and $150,000 charged to renewal account, this latter being the sum charged to cost of coal mining in 1899 and credited to renewal account. This was done in anticipation of the work that it was planned to do during 1900.

"There was completed and put in operation during the year three new washeries—the Diamond, Bellevue, and Hampton. These, with the Oxford previously owned, are all engaged in washing out from the old culm banks of the company the smaller or steam sizes of coal, which in the earlier days of the anthracite industry it was thought was refuse coal such as could never be marketable. The company washed from these culm banks during the past year 318,925 tons of coal. It has sold this coal at a price which has paid back the cost of securing it, and in addition a remunerative freight rate to the points at which it was delivered to consumers. Such as it has not sold it has consumed in its own locomotives, making a cheap and excellent fuel.

"Such portion of these culm-banks as can not make fuel, being the refuse, is washed back into the old workings of the mines, and furnishes additional support to the surface of the ground. This will permit of more of the pillars of coal being taken out than would otherwise be possible. It will be readily seen how advantageous these washery operations will prove to the company.

"There is an almost unlimited demand already for these small coals produced from washeries. This company has a contract with a large manufacturing concern for a supply of 1,000 tons per day for a period of years at a remunerative price.

"Improvements of an important character have been planned and authorized for the coming year which will both increase the capacity of the company's mining operations and decrease the cost of its output."

[From the same report.]

(Pages 10 and 11): "The net results of the operations of the year under consideration, while not equaling those of the previous one, can not be regarded otherwise than satisfactory and encouraging in

view of the unusual occurrences of the year so seriously affecting the company's chief business.

"The outlook for the future seems most promising. The recent transactions whereby certain important anthracite coal properties have changed ownership or control concentrates this important industry in fewer hands than ever before and places it on a permanently better basis than hitherto.

"These changes, the prices paid for the properties transferred, the strength and conservatism of the interests acquiring same, all would seem to promise future market conditions that amount almost to a guaranty to this company of highly satisfactory results to its stockholders from both its extensive coal properties and its railroad operations."

* * * * * * *

"As previously stated, the company has, during the past year, done a large amount of work at great expense, which was imperatively needed and which has greatly improved its property.

"Nearly all work of this character, mentioned in the last annual report as having been planned, has been done. Much more of a similar character has been arranged for during the coming year, and for several years such work and expenditures necessary to complete it will be heavy. With this work accomplished, and the line equipped with modern, heavy engines and cars as planned, this company will, without question, be able to show highly satisfactory results each year to its owners."

[From the annual report of the Delaware, Lackawanna and Western Railroad Company for the year ending December 31st, 1901, signed by W. H. Truesdale, president.]

(Page 10): "The mining operations of the company have been carried on successfully with but slight interruption from accidents or casualties of any kind, and the physical condition of the mining properties and collieries not only fully maintained, but in many respects substantially improved.

"The details of the improvement work done during the year and costing $321,853.21 are given in a subsequent part of this report. Further work of a similar character is planned for the coming year, which, while adding to the productive capacity of the company's collieries and keeping up the quality of its coal to the well-known high standard it has obtained, will tend to enable it to mine and prepare its coal as cheaply as in previous years.

"The demand for the washery coals produced by the company's four washeries from the old culm banks has been very heavy during the past year; the amount reclaimed and shipped from the washeries during the year was 822,000 tons. These coals seem to be continually growing in favor for steam purposes, and with the view of keeping

pace with this demand another washery is under construction, with the probability that still another will be built during the coming year.

"The marketing of anthracite coal during the past year by the different large interests owning a large percentage of this coal deposit has been conducted with exceptional good judgment and in the most harmonious spirit. To this is due the excellent results obtained during the year in the handling of this great and growing industry.

"The present outlook is favorable to an indefinite continuance of these favorable conditions."

(Page 16):

[From the same report.]

Coal department operations.

SALES AND EARNINGS.

	1901.			1900.		
COAL SALES.						
At mines	*Tons.* 98,808	$196,859.39		*Tons.* 90,152	$119,467.38	
Company's supply	982,003	1,018,539.47		823,623	966,031.79	
Local agencies	4,715,867	16,433,061.11		3,919,171	13,306,769.01	
Foreign agencies	1,537,577	8,551,548.14		1,329,791	6,819,187.89	
Total sales	7,334,255		$26,200,008.11	6,162,737		$21,211,456.07
Barge earnings, company's boats	531,290		166,165.74	540,892		159,897.96
Total sales and earnings	7,334,255		26,366,173.85	6,162,737		21,371,354.03
Coal on hand December 31, 1901	456,270		1,642,573.44	247,370		890,532.90
			28,008,747.29			22,261,886.93

COST AND EXPENSES.

	Tons.			*Tons.*		
Coal on hand January 1	247,370					
Excess by inventories	25,739					
Total	273,109		$890,532.90	684,602		$2,464,568.46
Cost of coal mined and purchased	7,517,416		11,288,070.91	5,725,505		7,561,457.74
TRANSPORTATION.						
On D. L. & W. lines	6,123,978	$10,656,340.40		4,877,401	$8,549,534.72	
On lines beyond	(2,347,485)	1,618,159.54		(1,816,209)	1,097,884.52	
Total	6,123,978		12,274,499.94	4,877,401		9,647,419.24
HANDLING, SELLING, ETC.						
Handling, local and foreign agencies	6,253,444	572,805.18		4,891,815	538,979.45	
Commissions	3,618,598	746,553.13		3,111,163	573,055.47	
General expenses		91,023.25			131,788.13	
Total			1,410,381.56			1,243,823.05
Vessel expenses[a]			184,765.64			144,586.24
EXTRAORDINARY.						
Improvements			321,853.21			
Total cost and expenses			26,370,104.16			21,061,804.73
Profit			1,638,643.13			1,200,082.20
			28,008,747.29			22,261,886.93

[a] Includes cost new scow barges, $40,000. Taxes are charged to general tax account.

[From the annual report of The Delaware, Lackawanna and Western Railroad Company for the year ending December 31st, 1903, signed by W. H. Truesdale, president.]

(Pages 9 and 10): "The company's mining operations during the year were prosecuted vigorously and successfully without serious accident or casualty, and with the development work done and improvements made, the management believes its coal properties were never in better condition than at the close of the year. It can hardly be expected that so large a tonnage of anthracite coal can be as readily marketed during the coming year as in 1903. If, however, it shall appear later that such is possible, this company is in position to mine, sell, and transport as much or more during the year 1904.

"Included in the figures showing the total coal tonnage of the company for the year are 1,004,597 tons of washery coal, for steam purposes, taken and prepared by the washeries from the old culm banks of the company. There are five of these washeries now in operation, and their product finds an almost unlimited market among the factories and users of steam in New York and at other points on the line at prices in competition with any steam fuel in the market, and which more than pay for cost of production and rates of transportation.

"The improvements made during the year and the cost of same, aggregating $333,470.86, are shown in detail on page 17 hereof. They were all made in pursuance of well considered and matured policy and plans for developing the company's mining properties, improving the quality of its coal, and cheapening the cost of its production."

[From the annual report of the Delaware, Lackawanna and Western Railroad Company for the year ending December 31st, 1906, signed by W. H. Truesdale, president.]

(Page 10): "The demand for anthracite coal has been active throughout the year, and this company has had no difficulty in marketing all the coal it could produce at the prices which have prevailed since the strike of 1902."

[From the annual report of the Delaware, Lackawanna & Western Railroad Company for the year ending December 31, 1908, signed by W. H. Truesdale, president.]

(Page 4):

	1908.	1907.	Increase.	Decrease.
Revenue:				
From transportation of coal	$14,558,702.53	$14,361,416.47	$197,286.06	
From transportation of merchandise freight	9,850,008.20	12,235,807.52		$2,385,799.32
From transportation of passengers	6,449,032.48	6,757,596.11		308,563.63
From transportation of mail	195,885.96	202,180.00		6,294.04
From transportation of express	695,282.60	741,800.36		46,517.76
From transportation of milk	776,753.83	786,654.38		9,900.55
From transportation by ferries		1,223,309.22		1,223,309.22
From miscellaneous sources		955,708.68		955,708.68
Other revenue from transportation	243,254.82		243,254.82	
Revenue from operations other than transportation	129,574.94		129,574.94	
Total revenue	32,898,495.36	37,264,472.74		4,365,977.38
Expenses:				
For maintenance of way and structures	3,343,395.98	4,974,887.87		1,631,491.89
For maintenance of equipment	4,747,700.13	3,731,081.50	1,016,618.63	
For traffic expenses	569,398.04		569,398.04	
For transportation expenses	9,312,644.67	12,254,278.42		2,941,633.75
For general expenses	650,515.97	579,491.12	71,024.85	
Total expenses .....56.61%.	18,623,654.79	21,539,738.91		2,916,084.12
Net revenue from operation. 43.39%.	14,274,840.57	15,724,733.83		1,449,893.26
Outside operations:				
Operating revenues	2,725,184.68		2,725,184.68	
Operating expenses	2,569,286.13		2,569,286.13	
Net revenue from outside operations	155,898.55		155,898.55	
Total net revenue	14,430,739.12	15,724,733.83		1,293,994.71
Less taxes	1,180,800.00	1,349,700.00		168,900.00
	13,249,939.12	14,375,033.83		1,125,094.71
Add for additional income:				
Interest on investments	355,543.00	395,943.33		40,400.33
Coal department earnings	4,166,792.50	4,224,920.69		58,128.19
Dividends on stocks	467,887.50	414,106.87	53,780.63	
Rentals—Miscellaneous	149,519.38		149,519.38	
Interest, discount, and exchange	138,659.17	130,184.23	8,474.94	
Miscellaneous income	88,714.90		88,714.90	
Hire of equipment	296,702.63		296,702.63	
Sundry credits from adjustment of suspense account	16,432.77		16,432.77	
	5,680,251.85	5,165,155.12	515,096.73	
Total income	18,930,190.97	19,540,188.95		609,997.98
Less charges:				
Rentals of leased lines	5,160,139.50	5,168,166.16		8,026.66
Renewals and betterments	2,781,603.19	3,820,088.06		1,038,484.87
Interest on bonds		141,792.08		141,792.08
Rentals of New York terminals		145,029.46		145,029.46
Rentals—Joint facilities	291,323.19		291,323.19	
Sundry charges from suspense account and other deductions		175,785.79		175,785.79
Total charges	8,233,065.88	9,450,861.55		1,217,795.67
	10,697,125.09	10,089,327.40	607,797.69	
Less:				
Ten per cent (10%) dividends on stock	2,620,000.00	2,620,000.00		
Ten per cent (10%) extra dividend paid Dec. 15th	2,620,000.00	2,620,000.00		
	5,240,000.00	5,240,000.00		
Balance surplus	5,457,125.09	4,849,327.40	607,797.69	

NOTE.—As explained in the president's letter in this report, owing to the changes made in the classification of accounts by the Interstate Commerce Commission, accurate comparisons of all items with previous year can not be shown.

[From the same report.]

(Page 5):

Traffic statistics for the year ended December 31st, 1908.

	1908.	1907.	Increase.	Decrease.	Per cent of decrease (−) and increase (+).
Coal traffic:					
Total tons (gross) transported	8,902,733	9,425,498	.....	522,765	− 5.55
Number tons carried one mile	1,689,942,333	1,693,486,758	.....	3,544,425	− .21
Average distance carried, miles	190	180	10	.....	+ 5.56
Average rate earned per ton	$1.64	$1.52	$0.12	.....	+a7.89
Average rate per ton per mile	$0.00861	$0.00848	$0.00013	.....	+a1.53
Merchandise traffic:					
Total tons (net) transported	8,228,094	10,525,561	.....	2,297,467	−21.83
Number tons carried one mile	1,391,118,177	1,794,360,642	.....	403,242,465	−22.47
Average distance carried, miles	169	170	.....	1	− .59
Average rate earned per ton	$1.197	$1.163	$0.0034	.....	+a .29
Average rate per ton per mile	$0.00708	$0.00682	$0.00026	.....	+a3.81
All freight traffic:					
Miles run by freight trains	6,784,035	7,529,681	.....	745,646	− 9.90
Earnings per freight train-mile	$3.60	$3.53	$0.07	.....	+a1.98
Average train load, revenue freight tons (net), tons	484.06	490.20	.....	6.14	− 1.25
Passenger traffic:					
Total number of passengers carried	23,666,228	23,223,663	442,565	.....	+ 1.91
Number passengers carried one mile	469,227,303	470,815,860	.....	1,588,557	− .34
Average distance carried, miles	20	20	.....	.....	.....
Average receipts per passenger	$0.2725	$0.2910	.....	$0.0185	−a6.36
Average rate per passenger per mile	$0.01374	$0.01435	.....	$0.00061	−a4.25
Miles run by passenger trains	5,732,804	5,681,705	51,099	.....	+ .90
Earnings per passenger train-mile, including mail, express, and milk	$1.42	$1.49	.....	$0.07	− 4.70

a Due to the new classification of accounts as required by the Interstate Commerce Commission, these items are not an accurate comparison with previous year.

[From the same report.]

(Pages 8 and 9): "The total cost of transportation service during the year was $9,312,644.67, or about one million dollars less than for the year 1907.

"The ratio of transportation expenses to total operating revenues was 28.31 per cent, a most favorable showing as compared either with previous results of this company, or with those of others similarly situated."

[From the same report.]

(Page 16):

Condensed general balance sheet, December 31st, 1908.

ASSETS.

Cost of road	$17,903,825.33	
Cost of equipment	8,019,201.37	
Other permanent investments	4,085,169.81	
		$30,008,196.51
Stocks in treasury	9,241,183.53	
Bonds in treasury	9,031,416.96	
		18,272,600.49

Advances to leased and controlled roads	$4,100,179.30	
Cash	3,201,457.00	
Coal on hand	3,302,138.02	
Coal bills and sundry accounts due	3,372,147.10	
Due from agents and conductors	502,454.76	
Sundry accounts receivable	780,325.70	
Material, fuel, and other supplies	2,285,864.36	
Bills receivable	2,151,121.10	
Miscellaneous accounts	113,612.32	
		$19,809,299.66
		68,090,096.66

LIABILITIES.

Capital stock	26,200,000.00
Rentals accrued, not due	1,651,728.66
Past due dividends, interest, and rentals	61,775.99
Del., Lack. & Western dividend, payable January 20	655,000.00
Audited vouchers	1,985,350.00
Audited pay rolls	1,491,328.34
Accrued taxes	1,186,726.54
Mortgages on real estate	86,073.90
Suspense account	41,365.65
Replacement of equipment reserve	91,771.70
Profit and loss, surplus	34,638,995.88
	68,090,096.66

[From the same report.]

(Page 26):

Comparative statement showing freight-traffic movement for the years 1908 and 1907.

Commodity.	1908.	1907.	Increase.	Decrease.
Products of agriculture:	*Tons.*	*Tons.*		
Grain	508,941	599,023		90,082
Flour	189,112	368,252		179,140
Other mill products	221,571	306,606		85,035
Hay	88,270	102,815		14,545
Tobacco	9,053	12,167		3,114
Cotton	27,801	22,203	5,598	
Fruit and vegetables	224,880	384,474		159,594
Products of animals:				
Live stock	96,853	94,833	2,020	
Dressed meats	147,944	159,050		11,106
Other packing-house products	59,791	138,703		78,912
Poultry, game, and fish	28,131	36,501		8,370
Wool	9,208	9,734		531
Hides and leather	22,990	33,256		10,266
Products of mines:				
Bituminous coal	1,018,872	948,156	70,716	
Coke	95,156	204,404		109,248
Ores	193,871	350,407		156,536
Stones, sand, and other like articles	548,222	618,079		69,857
Products of forest: Lumber	346,713	488,207		141,494
Manufactures:				
Petroleum and other oils	135,136	115,180	19,956	
Sugar	70,926	88,413		17,487
Naval stores	10,619	3,245	7,374	
Iron, pig and bloom	156,972	486,676		329,704
Iron and steel rails	110,460	42,179	68,281	
Other castings and machinery	196,991	343,107		146,116
Bar and sheet metal	100,007	148,436		48,429
Cement, brick, and lime	739,682	592,817	146,865	
Agricultural implements	35,500	122,480		86,980
Wagons, carriages, tools, etc	21,764	115,180		93,416
Wines, liquors, and beers	86,133	85,980	153	
Household goods and furniture	16,724	99,769		83,045
Merchandise	949,039	1,445,013		495,974
Miscellaneous: Other commodities not mentioned above	1,760,767	1,960,216		199,449
	8,228,094	10,525,861		2,297,467
Anthracite coal ..... net tons	9,971,061	10,556,558		585,497
Total tonnage	18,199,155	21,082,119		2,882,964

(Page 18):

[From the same report.]

Coal department operations.

SALES AND EARNINGS.

	1908.			1907.		
COAL SALES.	*Tons.*			*Tons.*		
At mines	101,057	$234,772.95		106,865	$271,640.90	
Company's supply	1,377,708	1,351,488.93		1,672,237	1,762,475.55	
Local agencies	5,789,685	21,725,883.70		6,199,942	22,796,731.11	
Foreign agencies	2,341,677	14,873,271.86		2,405,147	15,219,755.62	
Total sales	9,610,127		$38,185,417.44	10,384,191		$40,050,603.18
Barge earnings, company's boats				975,901		245,686.40
Total sales and earnings	9,610,127		38,185,417.44	10,384,191		40,296,289.58
Coal on hand December 31	1,294,321		3,302,138.02	590,089		1,888,645.70
			41,487,555.46			42,184,935.28

COST AND EXPENSES.

	Tons.			*Tons.*		
Cost of coal mined and purchased	10,314,359		$17,063,059.23	10,371,341		$16,752,181.10
TRANSPORTATION.						
On D., L. & W. lines	8,388,315	$14,318,780.77		8,577,354	$14,460,328.99	
On other lines	2,745,807	2,014,737.77		2,506,478	1,970,832.36	
Total			16,333,518.54			16,431,161.35
HANDLING, SELLING, ETC.						
Handling, local and foreign agencies	7,933,179	839,932.33		8,388,980	942,891.22	
Commissions	2,234,139	436,689.13		2,282,831	439,508.01	
General expenses		115,590.32			151,729.48	
Total			1,392,211.78			1,534,128.71
Vessel expenses						218,816.15
Improvements			252,827.71			768,912.18
Taxes			390,500.00			425,600.00
Total cost and expenses			35,432,117.26			36,145,799.49
Profit			4,166,792.50			4,224,920.69
Coal on hand January 1	590,089		1,888,645.70	602,939		1,814,215.10
			41,487,555.46			42,184,935.28

PAGE BOUND VERTICAL IN BOOK

[From the Fourth Annual Report of the New York, Susquehanna and Western Railroad Company for the year ending June 30, 1897:]

(Page 5): "Earnings, expenses, and net earnings of the New York, Susquehanna & Western Railroad Company, together with its leased and operated lines, have been as follows:

Gross earnings:		
From freight (coal)	$1,291,090.68	
From freight (merchandise)	482,790.13	
From passengers	376,064.26	
From mail, express, and miscellaneous	98,877.49	
		$2,248,822.56
Operating expenses		1,278,344.62
Net earnings from operation		$970,477.94
Add for:		
Interest on bonds owned	$27,498.78	
Rents and miscellaneous	17,057.51	
		44,556.29
		$1,015,034.23
The charges have been as follows:		
Interest on funded debt	$815,776.67	
Rentals	28,706.13	
Taxes	52,771.62	
To discount and interest account and interest on mortgages on real estate	23,775.22	
Sinking fund of bonds of leased lines, etc	5,566.20	
		926,595.84
Surplus		$88,438.39

[From the same report.]

(Pages 7 and 8): "In the last annual report your attention was called to the large amount paid each year to connecting railroad companies for switching coal in the Lackawanna Valley. I am now gratified to be able to state to you that prior to the 1st day of October, the Susquehanna Connecting Railroad (which has been leased to the Wilkes-Barre & Eastern Railroad Company) will be completed. This road will enable your company to reach a number of the collieries that ship coal over your road, with its own engines and cars, as well as largely reducing the lateral charges from other collieries.

"Your company has guaranteed the principal and interest of the $500,000 first mortgage ten-year 6 per cent bonds of the Susquehanna Connecting Railroad Company, and it is estimated that the saving in switching charges will be sufficient to enable these bonds to be paid off in ten years, in addition to which there will be a large net saving to your company.

"The completion of this road places your company in an independent position in respect to the transportation of coal."

Adjourned to meet at room 47, Post-Office building, New York City, on Thursday, September 30th, 1909, at 10.30 a. m.

Met pursuant to adjournment, Thursday, September 30, 1909, 10.30 a. m., room 47 Federal building, New York City.

Present: The Examiner, and Messrs. Todd and Seager.

Adjourned until Friday, October 1, 1909, 10.30 a. m., at the same place.

Met pursuant to adjournment, Friday, October 1, 1909, 10.30 a. m., room 47 Federal building, New York City.

Present: The Examiner, and Messrs. Todd and Seager.

It is agreed that G. E. Hustis, general auditor of the Delaware, Lackawanna and Western Railroad Company, had he been called to the stand and sworn as a witness, would have testified as follows from the records of said company:

That the total anthracite coal tonnage transported by the Delaware, Lackawanna and Western Railroad, from the mines to all points, in the calendar year 1900, was 6,091,133 gross tons, of which the Delaware, Lackawanna and Western Railroad itself shipped 4,877,401 gross tons; and in the calendar year 1907 it was 9,425,498 gross tons, of which the Delaware, Lackawanna and Western Railroad shipped 8,658,044 gross tons.

That the total anthracite tonnage transported to New York Harbor, f. o. b. vessel, from the mines by the Delaware, Lackawanna and Western Railroad in the calendar year 1900 was 1,126,778 gross tons, of which the company itself shipped 975,057 gross tons; and in the calendar year 1907 was 2,452,373 gross tons, of which the company itself shipped 2,162,750 gross tons.

That in the calendar year 1907 the total anthracite tonnage transported by the Delaware, Lackawanna and Western Railroad was 9,425,498 gross tons, from which the gross freight revenue was $14,598,182.14; in the calendar year 1908 its total anthracite tonnage was 8,902,733 gross tons, from which the gross freight revenue was $14,588,702.53. That in the calendar year 1907 the total bituminous coal tonnage transported by the Delaware, Lackawanna and Western Railroad was 948,156 net tons, from which the gross freight revenue was $304,280.33; in the calendar year 1908 its total bituminous coal tonnage was 1,018,872 net tons, from which the gross freight revenue was $326,974.36. That in the calendar year 1907 its total coke tonnage was 204,404 net tons, from which the gross freight revenue was $65,596.92; in 1908 its total coke tonnage was 95,156 net tons, from which the gross freight revenue was $30,537.27. That in the calendar year 1907 the total general merchandise tonnage of the Delaware, Lackawanna and Western Railroad was 10,525,561 net tons, from which the gross freight revenue was $12,235,807.52; in the calendar year 1908 its total general merchandise tonnage was 8,228,094 net tons, from which the gross freight revenue was $9,850,008.20. Included in the general merchandise tonnage and in the gross freight revenues therefrom are the tonnages of bituminous coal and coke

and the gross freight revenues from bituminous coal and coke, given above.

That in the calendar year 1899 the average haul of the anthracite tonnage of the Delaware, Lackawanna and Western Railroad was 147 miles, and the average rate per gross ton per mile on anthracite tonnage was $0.00946. In the same year the average haul of its general merchandise was 157 miles, and the average rate per net ton per mile on the general merchandise tonnage was $0.00679. That in the calendar year 1908 the average haul of its anthracite tonnage was 190 miles and the average rate per gross ton per mile on anthracite tonnage, $0.00861. In the same year the average haul of its general merchandise tonnage was 169 miles and the average rate per net ton per mile on general merchandise tonnage, $0.00708.

The published freight rates of the Delaware, Lackawanna and Western Railroad for the transportation of anthracite coal from the mines to Hoboken were as follows: During the calendar years 1892, 1893, and up to April 2, 1894, the rate was $1.80 on all sizes. Effective April 2, 1894, and continuing until July 1, 1895, the rate was $1.45 on all sizes. From July, 1895, until November 1, 1895, the rate was $1.25 on all sizes. Effective November 1, 1895, and continuing to January 1, 1899, the rate was $1.45 on all sizes. Effective January 1, 1899, the rate was made $1.60 on all sizes.

That of the contracts in force subsequent to 1892 between the Delaware, Lackawanna and Western Railroad and operators located along its lines for the purchase of their production of coal at a stated percentage of the average price of such coal at tidewater, the payment of 65 per cent of the average tidewater price, and the present standard of preparation were made effective as of the first day of November, 1900, in the case of the contracts with the following operators, viz:

The Clear Spring Coal Company.
Kingston Coal Company.
William Connell & Company.
Pancoast Coal Company.
Mount Lookout Coal Company.
Lackawanna Coal Company.
Peoples Coal Company.

In the case of the contracts with the George F. Lee Coal Company and the North End Coal Company, the payment of the 65 per cent of the average f. o. b. price at tidewater and the present standard of preparation were made effective as of the dates of said contracts, respectively.

(Adjourned.)

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